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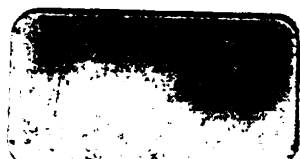
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GOVERNMENT CONTROL AND OPERATION OF RAILROADS

HEARING

BEFORE THE

COMMITTEE ON INTERSTATE COMMERCE UNITED STATES SENATE

SIXTY-FIFTH CONGRESS

SECOND SESSION

PURSUANT TO

S. RES. 171

A RESOLUTION AUTHORIZING AND DIRECTING THE COMMITTEE
ON INTERSTATE COMMERCE TO INQUIRE INTO AND REPORT TO
THE SENATE AT THE EARLIEST PRACTICABLE DATE UPON THE
RECOMMENDATIONS MADE BY THE INTERSTATE COMMERCE
COMMISSION REGARDING CONDITIONS AFFECTING
INTERSTATE TRANSPORTATION

Printed for the use of the Committee on Interstate Commerce

PARTS 1 TO 7, INCLUSIVE



WASHINGTON
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1918

COMMITTEE ON INTERSTATE COMMERCE.

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HALL MCALLISTER, *Clerk.*

GOVERNMENT CONTROL AND OPERATION OF RAILROADS.

SATURDAY, DECEMBER 29, 1917.

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE COMMERCE,
Washington, D. C.

The committee met at 10.30 o'clock a. m., pursuant to call, in the committee room, Capitol, Senator Henry L. Myers presiding.

Present: Senators Myers (acting chairman), Thompson, Cummins, La Follette, Poindexter, Watson, and Kellogg; also Commissioners Hall and McCord, of the Interstate Commerce Commission.

The Committee proceeded to the consideration of the matter contained in the resolution S. Res. 171, which is as follows:

[S. Res. 171, Sixty-fifth Congress, Second Session.]

Resolved, That the Committee on Interstate Commerce of the Senate is hereby authorized and directed, by subcommittee or otherwise, to inquire into and report to the Senate at the earliest practical date upon the recommendations made by the Interstate Commerce Commission regarding conditions affecting interstate transportation; that said committee may conduct such inquiry by subcommittee or otherwise, and shall be empowered to hold sessions during the recess of the Senate, and for this purpose the committee or any subcommittee thereof is empowered to send for persons and papers, to administer oaths, to summon and compel the attendance of witnesses, to conduct hearings and have reports of same printed for use; and any expense in connection with such inquiry shall be paid out of the contingent fund of the Senate upon vouchers to be approved by the chairman of the committee.

The ACTING CHAIRMAN. The committee will come to order. There is a quorum present.

DEATH OF SENATOR NEWLANDS.

Senator CUMMINS. Mr. Chairman, before the committee turns its attention to public affairs, I think it is appropriate for me to mention a very sorrowful fact, of which we are all very conscious. Since our last meeting we have lost our chairman by death. It is not a fitting time for eulogies, but I have felt that before we take any action upon other matters that in compliance with an informal request, by which a committee was appointed to draft a tribute to our beloved chairman, that I should take the liberty of presenting the following resolution:

Resolved, That we recognize that at another time and in another place an opportunity will be presented to express our views upon the life and services of our late associate, Francis G. Newlands; but we regard it as appropriate now and here, and before we pass to our accustomed official duties, to record our deep appreciation of his leadership and work as chairman of this committee, and our especial bereavement in the loss of a dear friend and constant companion.

To the committee and to every member of it he was more than a chairman. He was a gentle, helpful, guiding counselor. His information upon the varied subjects coming before the committee was profound, accurate, and comprehensive. He was a persistent seeker for the truth in all the many inquiries which the committee from time to time has been required to make. His grasp of the difficult and intricate problems of commerce and transportation was firm, and his clear vision in this vital field of civilization and industry distinguished him among his fellow men.

We mourn his death, and hold in loving memory the great qualities of his mind and the shining virtues of his heart; and be it further

Resolved, That a copy of this resolution be sent to the family of the deceased Senator.

Senator CUMMINS. Mr. Chairman, I move that that resolution be entered upon the records of this committee.

Senator KELLOGG. I second the motion.

(The resolution was agreed to unanimously.)

The ACTING CHAIRMAN. What is the pleasure of the committee? I know that Senator Pomerene was very anxious to be present at this meeting as he spoke to me about it. Will the committee proceed now or defer the hearing in order to give the temporary chairman, Senator Pomerene, an opportunity to be present?

Senator CUMMINS. May I ask whether Senator Pomerene has made any request for a postponement or adjournment of the hearings?

The ACTING CHAIRMAN. No; he did not to me.

Senator WATSON. Mr. Chairman, I think it would be no discourtesy at all to Senator Pomerene, who is more or less familiar with all the questions involved, for us to proceed for at least an hour, and I therefore move that we proceed with the hearing.

(The motion was agreed to.)

The ACTING CHAIRMAN. I have not been able to attend all the meetings of the committee, and I will ask what is the nature and object of the meeting to-day, and what proceedings are to be had?

Senator CUMMINS. Mr. Chairman, inasmuch as we are acting upon a resolution which I introduced in the Senate, and which the Senate adopted, it may be proper for me to state my understanding of the present situation.

The members of the committee will remember that in the beginning of the present session of Congress, the Interstate Commerce Commission, under the statute which created the commission, and which directed it to make reports to Congress annually and from time to time, made a special report; in fact, there were two reports made, one of which, as I understand it, was by a majority of the commission and the other by a single member of the commission. The majority report recited very briefly the conclusions of the commission respecting the present railway situation or transportation situation, reaching the conclusion that something must be done in order to facilitate and speed the movement of traffic in order to meet the demands of the country both in commerce and for war. The majority of the commission presented two alternatives, one Government occupation and operation, and in that way unifying the transportation system of the United States, and the other, some modification of our present laws that related to pooling and consolidation, and leaving the railway companies free to take voluntary action that would result in the unification of transportation.

The other report was based upon precisely the same conclusions as to the inadequacy and inefficiency of the present method of management of our transportation lines, but recommended only the taking possession of the railroads by the Government, and operating them as governmental instrumentalities. That recommendation or those recommendations, together with our knowledge of the conditions which we are confronting, led me to offer in the Senate the following resolution:

Resolved, That the Committee on Interstate Commerce of the Senate is hereby authorized and directed, by subcommittee or otherwise, to inquire into and report to the Senate at the earliest practical date upon the recommendations made by the Interstate Commerce Commission regarding conditions affecting interstate transportation; that said committee may conduct such inquiry by subcommittee or otherwise, etc.

The remainder of the resolution is merely formal.

Under the resolution the committee met a week ago, and there was some discussion with regard to the time at which the hearings should begin. It was proposed on the one hand that they should begin early; that is, that we should ask the members of the Interstate Commerce Commission or some of them to be present and give us more fully and completely the reasons which led to their conclusions. Others thought that the hearings, or the beginning of the hearings, should be postponed until a later date. The latter view prevailed, and the committee adjourned to meet on Wednesday morning of this week. In the meantime, a series of written questions, or questions calling for certain statistical information, were prepared and presented to the commission. The answer of the commission to these inquiries, in so far as they could be answered in the limited time, are now before the committee, which will be inserted in the record. On Monday night Senator Newlands died and our meeting on Wednesday morning was an informal one; nothing was done except to adjourn to meet this morning at 10.30 o'clock.

We have now met, and the question before the committee at this hearing is the matter of the resolution, which I have read, in order that we may speedily report to the Senate our views with regard to the question involved in the subject of the recommendation of the commission under the resolution which I offered, and as I understand it, the members of the commission were requested to be here this morning, and they are here.

The data referred to above is here printed in full, as follows:)

DECEMBER 21, 1917.

FAIRFAX HARRISON, Esq.,
Chairman Special Committee on National Defense,
American Railway Association,
719 Thirteenth Street NW.

MY DEAR SIR: Will you please furnish to the Senate Committee on Interstate Commerce by 10.30 a. m. Wednesday, December 26, next, the following information:

Statement showing amount of traffic being handled by the railway companies at the present time as compared with the previous years 1915, 1916, and 1917, or so much of said period as can be furnished, separating the freight and the passenger, together with the

amount of freight and passenger equipment now in use by the railroad companies, as compared with said previous periods, including motive power, and the extent of the present shortage of transportation facilities, the districts particularly affected, and the reasons therefor.

Also give the committee information as to the extent of the use of priority orders of shipments, and its effect on traffic.

What changes in methods of administration have been adopted within the past year to relieve congestion of freight and increase efficiency of the transportation system, and what further changes in methods of administration would you suggest?

What, if any, additional legislation do you suggest?

Very truly, yours,

FRANCIS G. NEWLANDS.

(Signature)

THE AMERICAN RAILWAY ASSOCIATION.

SPECIAL COMMITTEE ON NATIONAL DEFENSE.

Washington, D. C., December 24, 1917.

HON. FRANCIS G. NEWLANDS,

Chairman Committee on Interstate Commerce.

United States Senate, Washington, D. C.

DEAR SIR: In compliance with the request contained in your letter of December 21, this committee is sending you herewith on the attached sheets answers to the several questions propounded by you.

Faithfully, yours,

FAIRFAX HARRISON.

EXHIBIT 1.

STATEMENT SHOWING AMOUNT OF TRAFFIC BEING HANDLED BY THE RAILWAY COMPANIES AT THE PRESENT TIME AS COMPARED WITH THE PREVIOUS YEARS, 1915, 1916, AND 1917, OR SO MUCH OF SAID PERIOD AS CAN BE FURNISHED, SEPARATING THE FREIGHT AND THE PASSENGER, TOGETHER WITH THE AMOUNT OF FREIGHT AND PASSENGER EQUIPMENT NOW IN USE BY THE RAILROAD COMPANIES, AS COMPARED WITH SAID PREVIOUS PERIODS, INCLUDING MOTIVE POWER, AND THE EXTENT OF THE PRESENT SHORTAGE OF TRANSPORTATION FACILITIES, THE DISTRICTS PARTICULARLY AFFECTED, AND THE REASONS THEREFOR.

Freight and passenger traffic and freight and passenger revenues, Classes I and II roads, calendar years 1915-1917.

Item.	Year ended June 30, 1915. ¹	Calendar year 1915.	Year ended June 30, 1916. ¹	Calendar year 1916.	Calendar year 1917.
Revenue ton-miles:					
Class I roads.....	273,913,006,569		339,870,323,675	\$362,134,291,397	396,433,153,184
Class II roads.....	2,917,296,154		3,229,614,130		
Total classes I and II roads...	276,830,302,723	\$309,965,120,264	343,099,937,805	\$365,760,988,679	\$400,403,341,005
Ratio of total to Class I only ²		1.01001478			
Relative amounts calendar year 1915-100.		100.0		118.0	129.2
Passenger miles					
Class I roads.....	31,789,928,187		33,645,908,150	\$34,573,372,696	
Class II roads.....	594,319,376		567,687,977		(³)
Total classes I and II roads...	32,384,247,563	\$33,298,921,845	34,213,596,127	\$35,186,307,900	
Ratio of total to Class I only ²		1.01775796			
Relative amounts calendar year 1915-100.		100.0		105.7	
Freight revenue:					
Class I roads.....	\$1,968,522,179	\$2,148,417,980	\$2,402,210,995	\$2,557,807,255	\$2,837,385,232
Class II roads.....	\$49,604,029		\$54,721,135		
Total classes I and II roads...	\$2,038,126,208	\$2,199,465,057	\$2,456,932,130	\$2,618,581,548	\$2,904,802,385
Ratio of total to Class I only ²		1.02376031			
Relative amounts calendar year 1915-100.		100.0		119.1	132.1
Passenger revenue:					
Class I roads.....	\$630,705,841	\$646,317,227	\$673,806,175	\$706,149,005	\$814,267,775
Class II roads.....	14,942,279		13,446,474		
Total classes I and II roads...	\$645,648,120	\$660,382,557	\$687,252,649	\$721,516,191	\$831,987,838
Ratio of total to Class I only ²		1.02176196			
Relative amounts calendar year 1915-100.		100.0		109.3	126.0

¹ As reported by the Interstate Commerce Commission.

² Compiled by Bureau of Railway Economics from annual reports of roads to Interstate Commerce Commission.

³ Estimated from monthly reports of Class I roads to the war board on freight operations, as per accompanying Exhibit 1.

⁴ Average for years ended June 30, 1915 and 1916.

⁵ Estimated by multiplying amounts shown for Class I roads by the ratio of aggregate for Class I and Class II roads to the amount for Class I roads only.

⁶ Average for years ended June 30, 1915 and 1916.

⁷ No data.

⁸ Sum of revenues reported by months during 1915.

⁹ Estimated from monthly reports of revenues and expenses to Interstate Commerce Commission, as per accompanying Exhibit 2.

ESTIMATE OF TON-MILES FOR CALENDAR YEAR 1917—ROADS REPORTING TO DECEMBER 24, 1917, TOTALS FOR JANUARY-MARCH, INCLUSIVE.

Bessemer & Lake Erie.	Chicago & North Western.
Buffalo, Rochester & Pittsburgh.	Chicago Great Western.
Chicago & Eastern Illinois.	Chicago, Peoria & St. Louis.
Elgin, Joliet & Eastern.	Rock Island System.
Grand Rapids & Indiana.	Colorado Midland.
Hocking Valley.	Denver & Salt Lake.
Lehigh & Hudson River.	Louisiana & Arkansas.
Pittsburgh & West Virginia.	St. Louis-San Francisco.
Toledo, St. Louis & Western.	Southern Pacific (lines in Texas and Louisiana).
Mobile & Ohio.	Texas & Pacific.
Nashville, Chattanooga & St. Louis.	Norfolk & Western.
New Orleans Great Northern.	(Total mileage, 39,141.)
Southern Railway in Mississippi.	
Arizona Eastern.	
(a) Revenue ton-miles, January-March, 1917-----	13, 057, 869, 430
(b) Revenue ton-miles, April-September, 1917-----	30, 802, 029, 539
(c) Total January-September, 1917-----	43, 859, 898, 969
(d) Ratio ton-miles January-September is to April-September	
(e) ÷ (b)-----	1. 423929
(e) Revenue ton-miles all Class I roads April-September, 1917--	206, 153, 354, 471
(f) Estimated revenue ton-miles all Class I roads January-September (e) × (d)-----	293, 547, 710, 346

ROADS REPORTING TO DECEMBER 24, 1917, TOTALS FOR OCTOBER, 1917.

Baltimore & Ohio.	Southern Ry. in Mississippi.
Baltimore, Chesapeake & Atlantic.	Arizona Eastern.
Bessemer & Lake Erie.	Atchison, Topeka & Santa Fe.
Boston & Maine.	Chicago & North Western.
Buffalo & Susquehanna.	Chicago, Burlington & Quincy.
Buffalo, Rochester & Pittsburgh.	Chicago Great Western.
Central New England.	Chicago, Peoria & St. Louis.
Chicago & Erie.	Chicago, St. Paul, Minneapolis & Omaha.
Chicago, Indianapolis & Louisville.	Colorado & Southern.
Cumberland Valley.	Colorado Midland.
Delaware, Lackawanna & Western.	Denver & Salt Lake.
Detroit & Toledo Shore Line.	Duluth & Iron Range.
Elgin, Joliet & Eastern.	El Paso & Southwestern.
Erie.	Fort Worth & Denver City.
Hocking Valley.	Great Northern.
Lehigh & New England.	Gulf, Colorado & Santa Fe.
Long Island.	International & Great Northern.
New York, Chicago & St. Louis.	Kansas City Southern.
New York, New Haven & Hartford.	Los Angeles & Salt Lake.
New York, Susquehanna & Western.	Louisiana & Arkansas.
Pennsylvania R. R. (Lines East).	Minneapolis & St. Louis.
Pere Marquette.	Minneapolis, St. Paul & Sault Ste. Marie.
Reading System.	Missouri Pacific.
Pittsburgh & West Virginia.	Northern Pacific.
Staten Island Rapid Transit.	Panhandle & Santa Fe.
Toledo, St. Louis & Western.	St. Louis-San Francisco.
Wabash.	St. Louis, San Francisco & Texas.
Western Maryland.	Southern Pacific Co. System.
Wheeling & Lake Erie.	Southern Pacific (Lines in Texas and Louisiana).
Alabama & Vicksburg.	Spokane, Portland & Seattle.
Chesapeake & Ohio.	Texas & Pacific.
Georgia Southern & Florida.	Trinity & Brazos Valley.
Gulf, Mobile & Northern.	Vicksburg, Shreveport & Pacific.
Illinois Central.	Wichita Valley.
Mobile & Ohio.	(Total mileage, 139,433.)
New Orleans Great Northern.	
Norfolk & Western.	
Southern Railway.	

(a) Revenue ton-miles, October, 1917-----	22, 436, 704, 008
(b) Revenue ton-miles, April-September, 1917-----	129, 909, 667, 573
(c) Per cent ton-miles for October were of April-September-----	17. 271004
(d) Revenue ton-miles all Class I roads, April-September, 1917-----	206, 153, 354, 471
(e) Estimated revenue ton-miles all Class I roads, October (d) × (c)-----	35, 604, 754, 015
(f) Estimated ton-miles all Class I roads, January-September, 1917-----	¹ 293, 547, 710, 846
(g) Estimated revenue ton-miles all Class I roads, January-October (e) + (f)-----	329, 152, 464, 361
(h) Freight revenue Class I roads, January-October, 1916----	\$2, 123, 708, 761
(i) Freight revenue Class I roads, calendar year 1916-----	\$2, 557, 807, 255
(j) Freight revenues, calendar year to January-October (i) ÷ (h)-----	1. 204406
(k) Estimated revenue ton-miles all Class I roads in 1917 on basis of ratio of freight revenue in 1916 (g) × (j)-----	396, 433, 153, 184
Considering the exceptional volume of present traffic, ton-miles for 1917 will doubtless reach, Class I roads-----	400, 000, 000, 000

Estimate of freight and passenger revenue for calendar year 1917.

(a) Freight revenues, January-October, 1916-----	\$2, 123, 708, 761
(b) Freight revenues, 12 months 1916-----	\$2, 557, 807, 255
(c) Ratio, 12 months to January-October (b) ÷ (a)-----	1. 204405
(d) Freight revenues, January-October, 1917-----	\$2, 355, 830, 798
(e) Estimated freight revenues, 12 months, 1917 (d) × (c)-----	\$2, 837, 385, 232
<hr/>	
(a) Passenger revenues, January-October, 1916-----	\$585, 271, 004
(b) Passenger revenues, 12 months 1916-----	\$706, 149, 005
(c) Ratio, 12 months to January-October (b) ÷ (a)-----	12. 065334
(d) Passenger revenues, January-October, 1917-----	\$674, 882, 084
(e) Estimated passenger revenues, 12 months 1916, (d) × (c)-----	\$814, 267, 775

Equipment in service on railways of the United States.

Equipment.	June 30, 1915. ¹	June 30, 1916. ¹	Dec. 31, 1916. ¹
Steam locomotives:			
Class I road.....	61, 883	60, 790	60, 945
Class II road.....	2, 062	1, 928	
Total Classes I and II roads.....	63, 945	62, 718	
Other locomotives:			
Class I roads.....	243	267	322
Class II roads.....	17	14	
Total Classes I and II roads.....	260	281	
Total locomotives:			
Class I roads.....	62, 126	61, 057	61, 267
Class II roads.....	2, 079	1, 942	
Total Classes I and II roads.....	64, 205	62, 999	
Freight cars:			
Class I roads.....	2, 288, 792	2, 236, 312	2, 277, 970
Class II roads.....	60, 140	53, 201	
Total Classes I and II roads.....	2, 348, 932	2, 289, 513	
Passenger cars:			
Class I roads.....	52, 690	51, 670	52, 145
Class II roads.....	2, 086	2, 060	
Total Classes I and II roads.....	54, 776	53, 730	

¹ See first sheet.

² Reported by the Interstate Commerce Commission.

³ Computed by Bureau of Railway Economics from annual reports to Interstate Commerce Commission.

NOTE.—The only data available for 1917 are those shown in the monthly reports of freight operations to the war board, and these show only freight locomotives and nothing as to passenger cars.

THE PRESENT SHORTAGE OF TRANSPORTATION FACILITIES, THE DISTRICTS PARTICULARLY AFFECTED, AND THE REASONS THEREFOR.

As will appear from other pages of this report, the demand for transportation in the United States has in the past year suddenly exceeded the capacity of the railroads in the limited but most important territory lying east of the Mississippi River and north of the Ohio and Potomac Rivers. In this territory are the chief munition plants and other basic industries upon which the United States is relying in its war preparations. The stimulated activity of these industries—many of which are new and created since the United States entered the war—has created a demand for transportation in that territory which has caused a congestion in transportation. Railroad officers in that territory have for several years been urging the economic necessity of enlarging the plant, though, of course, none of them anticipated the extent of the present demand. The reasons why the plant was not enlarged more than it has been are part of the recent economic history of the United States, which have been urged on behalf of the railroads upon Senator Newlands's joint committee.

Outside of the territory mentioned, that is to say, west of the Mississippi River and south of the Potomac and Ohio Rivers, there has been no such congestion as to delay materially the movement of all traffic offering. The railroads in this large territory have had their maximum traffic, but so far have been able to move it without material difficulty.

There have been "car shortages," that is to say, demands for cars in excess of the supply in this territory from time to time and temporarily, though some of them have been acute. These have been due not to the fact that the railroads in this territory have not supplied sufficient cars, but to the fact that their cars have been tied up in congested eastern territory. All special requirements of car supply have, however, through the endeavors of this committee and its commission on car service, eventually been met by arbitrary relocation of equipment out of the eastern territory.

We believe that the congestion in the eastern territory can be cleared up by the remedies now applied, and that with the sympathy and support of the Government authorities adequate transportation for all real needs can be provided in the eastern territory, as elsewhere in the country, without material immediate increase in the plant.

EXHIBIT 2.

INFORMATION AS TO THE EXTENT OF THE USE OF PRIORITY ORDERS OF SHIPMENTS, AND ITS EFFECT ON TRAFFIC.

The use of requests for priority in car supply and movement has been very general for the past six months or more on the part of the Army, the Navy, and the United States Shipping Board. The original plan contemplated that the commission on car service should be furnished with copies of all such requests, but the method of handling, especially by representatives of the Army, has been lax, and it is believed that there were a great many such requests made on the

railroads, direct copies of which never reached us. Furthermore, much of the movement represented by these requests extends into the future, so that it is not possible to make any figures that would fairly represent the volume of traffic that has been handled by the railroads in compliance with requests for preference. It is proper to state that the careless manner in which preference requests have been handled heretofore has now been corrected.

As stated above, however, the blanks for the purpose were used freely and the volume of traffic handled in this manner was undoubtedly large; but it is quite impossible to state in figures what effect this has had on the movement of other traffic. It has, however, been a burden obvious to all in touch with the subject. The Pennsylvania Railroad reports that at one time 85 per cent of the traffic on their Pittsburgh division was handled under preference orders. It has been claimed also from time to time, especially by some of the smaller lines, that all of their available equipment was required to take care of Government shipments.

The foregoing relates to preference shipments for account of the United States Government. Added to this have been shipments for account of the allies, amounting to many thousands of cars, which have been given a degree of preference by special order.

EXHIBIT 3.

THE AMERICAN RAILWAY ASSOCIATION, SPECIAL COMMITTEE ON NATIONAL DEFENSE, *Washington, D. C., December 22, 1917.*

CHANGES IN METHODS OF ADMINISTRATION ADOPTED WITHIN THE PAST YEAR TO RELIEVE CONGESTION OF FREIGHT AND INCREASE THE EFFICIENCY OF THE TRANSPORTATION SYSTEM.

The executive committee of the American Railway Association special committee on national defense was created on April 11, 1917, five days after the declaration of war by the United States on Germany. Following the declaration of war, Secretary of the Interior Lane introduced and had passed this resolution in the Council of National Defense:

Resolved, That Commissioner Willard be requested to call upon the railroads to so organize their business as to lead to the greatest expedition in the movement of freight.

In response to which the chief executives of most of our large railway systems met in Washington and—

Resolved, That the railroads of the United States, acting through their chief executive officers here and now assembled, and stirred by a high sense of their opportunity to be of the greatest service to their country in the present national crisis, do hereby pledge themselves, with the Government of the United States, and with the governments of the several States, and one with another, that during the present war they will coordinate their operations in a continental railway system, merging, during such period, all their merely individual competitive activities in the effort to produce a maximum of national transportation efficiency. To this end they hereby agree to create an organization which shall have general authority to formulate in detail and from time to time a policy of operation of all or any of the railways, which

policy, when and as announced by such temporary organization, shall be accepted and earnestly made effective by the several managements of the individual railroad companies here represented.

Following the adoption of this resolution, 631 railroads, comprising 262,000 miles of lines in the United States, immediately coordinated their activities, and for eight months have been operated as a unified continental system. In another resolution, contemporaneously adopted, the railroads agreed "to the direction of the executive committee in all matters to which its authority extends, as expressed in the resolution heretofore adopted." This executive committee, composed of five railroad executive officers, sits continuously in Washington and is commonly known as the railroads' war board. Quoting the chairman of our central department, "by this act, this great railway system with all its facilities was made to serve the Government in this crisis as completely as if it had owned them; and at the same time the Government was spared the expense of buying the roads and the responsibility and labor of managing them.

"Perhaps the most significant feature of the matter was that this act on the part of the railways was purely voluntary. No law required it. Another of its very significant features was that the step was taken without any prospect of special consideration or compensation having been held out by the Government. In England the railways have been united for operating purposes during the war into a single system; but there this action was required by law, and each railway was guaranteed the same net return that it had earned before the war began.

The individual companies composing our railway system, through the organization formed by themselves, placed their facilities at the service of the Government without any understanding or promise that if this resulted in loss to any individual line, this loss would ever be made good.

The additional expense of this organization to the carriers is \$800,000 per year; the Government assumes no expense or obligation whatsoever.

A large part of the work of the committee has been to stimulate the American railroads to greater efficiency and to cut out unnecessary competitive practices. This has been done in various ways, very largely through the agencies of the commission on car service and its 33 subcommittees covering the entire United States, whereby the most cordial and cooperative relations have been established with the public.

SOME THINGS THE WAR BOARD HAS DONE.

1. Formulated probably the most satisfactory car-service rules which the railroads have ever had. Arranged at once to pool box cars so that they circulate as freely over the United States as bank notes, and thereafter arranged to pool coal-carrying cars to promote their equally free circulation and to transfer locomotives from one line to another to meet unusual traffic requirements.

2. Established the most cordial and cooperative relations with commercial bodies, individual shippers, State railroad commissions, manufacturers' associations, etc., through the organization of 6 departments coextensive with those of the Army and 33 subcommittees of the commission on car service covering the entire United States.

3. Is conducting an active campaign for the conservation of facilities through intensive loading of cars, locomotives, etc., evidenced by statistics for the six months April to September, 1917, thus: Two hundred and four billions seven hundred and three millions ton-miles have been handled on Class I roads (gross revenues exceeding \$1,000,000 per annum), representing about 95 per cent of their total traffic, or 34,060,000,000 per month, an increase of 20.3 per cent over the average ton-miles handled per month in 1916, and 50 per cent over the monthly average of 1915. Estimating therefrom the ton-mileage for the whole year would produce the astounding total of 409,405,000,000, an increase of 135,164,000,000 over 1915. A conception of the magnitude of this additional business thrown upon and handled by our American roads may be formed thus: The ton-mileage, according to the latest statistics available, of the railroads of Canada, Germany, Great Britain, Russia, France, and Austria (excluding Hungary), embracing 178,542 miles of line, serving a population of 323,000,000, is 137,928,000,000, or substantially the same as the increase only of the traffic on our lines in two years.

Another way in which to visualize this accomplishment: In the first six months after we entered the war the railroads handled as much freight traffic as they did in the entire year 1906. In 1906 the average freight train was 344 tons, compared with 675 tons in the six months following the declaration of war. If traffic of these six months in 1917 had moved in the same average train load as in 1906, 96 per cent more freight-train service would have been required. The actual freight-train miles run in six months were 330,000,000. On the basis of the train load of 1906, 645,000,000 miles would have had to be run. The saving of 315,000,000 freight-train miles effected by this increase in trainload is the only thing which has maintained the solvency of our railway system, in the face of almost stationary freight and passenger rates and enormously increasing expenses of all kinds.

Efficiency of the plant has been increased in every direction. The number of freight locomotives in service has been increased by greater speed in repairing in order to reduce the time in shops. The same result has been accomplished as to freight equipment. Tons handled per car and per train have increased, as have the average miles run per locomotive and per car per day. The resultant effect of all of these economies is shown in the 1,094,800 ton-miles handled per month per locomotive, an increase of 16 per cent, for the six months ending September 30, 1917, and the 14,670 ton-miles handled per freight car, in the same period—an increase of 14.2 per cent—in each case over the preceding year. In effect, this added 4,897 locomotives and 339,427 freight cars to the equipment of the carriers. Two thousand eight hundred and forty locomotives and 141,475 freight cars on the average were ordered annually between 1907 and 1916; this additional equipment, therefore, was equivalent to the immediate delivery, without cost, of one year and nine months' locomotive orders and two years and four months' car orders.

Through the acquiescence of the public and the consent of State commissions, 28,656,983 unnecessary passenger train-miles have been discontinued, resulting in saving 1,800,000 tons of coal per annum, and the release of 570 locomotives and 2,800 train and engine men for freight service.

4. Developed a policy of relocating cars by ordering their movement empty. Since May 1 orders for moving 222,027 cars have been issued, of which 188,286 have been delivered off the initial lines. This change from previous policy is the most radical and far-reaching act that the committee has ever authorized. It has relieved the congested eastern and seaboard areas and has increased car supply on southern and western lines. The movement has been very expensive to the roads that moved the empties, but all orders have been cheerfully and promptly obeyed.

Under what is known as the Esch car-service act, placing the control of cars used in interstate commerce in the Interstate Commerce Commission, the Chief of the Division of Car Service, and the examining attorney of the Division of Car Service, of the Interstate Commerce Commission, have been sitting regularly with the Commission on Car Service since the 29th of May, 1917, thereby subjecting all orders issued by the commission on car service to the approval of the Interstate Commerce Commission.

5. Created the coordinating committee on exportations, whose function is to assemble information in relation to the bottoms, both in port and in transit, available for export shipments, in order to divert traffic where necessary to prevent congestion and to expedite shipments. The committee consists of chairman of the commission on car service, a special representative of the executive committee, together with representatives of the Army, the Navy, the Shipping Board, the Food Administration, the British ministry of shipping, and the traffic representative of the allied Governments. This committee has regulated the movement of grain for export, reducing the number of cars required without blocking port facilities.

6. In collaboration with the Committee on Coal Production of the Council of National Defense it brought about the pooling of Lake and tidewater coals, reducing the number of classifications from 677 to 97 of the former, and from 900 to 125 of the latter, which resulted in the much more expeditious movement of cars and vessels, and thereby conserved transportation.

Great anxiety prevailed throughout the summer and autumn for fear that the necessary tonnage of lake coal to the northwest and of ore from lower lake docks could not be moved before the close of navigation. These requirements have been satisfactorily met. These fears were inspired by alarming reports of shortage of coal published in many parts of the country. This shortage is due chiefly to the enormous increase in the demand for coal, and to faulty distribution, and can not fairly be attributed altogether to lack of transportation. The records of the railroads show not only that the coal operators have produced more coal than ever before, but that in the eight months, April to November, inclusive, the railroads have hauled and delivered 1,101,677 more cars of anthracite and bituminous coal than for the same months in 1916, an increase of 15 per cent in anthracite and 18 per cent in bituminous, over the best record ever previously made. The railroads have not been able at all times to carry all the coal offered, but has any other industry responded more efficiently to the demands created by the war than these statistics show the railroads to have done? And the railroads have accomplished what they have under the greatest difficulties, which we shall mention in detail hereafter. The coal problem is not, as has been represented, alto-

gether one of transportation. It is primarily a problem of distribution, for which the public must share the responsibility. The present system of distribution involves a great amount of cross-haul of coal, and a resulting large waste of transportation. The remedy, which doubtless requires surrender of convenience and old habits, is clear; it is to cause coal to be supplied to every section from the mines nearest that section. No one unacquainted with the facts can conceive the unnecessary long hauls of coal which have grown up under the right of the shipper to route his coal as he pleases. Whatever may have been the justification for it in normal times, this practice effectually reduces the efficiency of the transportation facilities in the time of the heaviest traffic ever experienced.

7. It has recommended to the Food Administrator to transfer the movement of foodstuffs and other export material to southern and Gulf ports to as large a degree as compatible with public interest in order to relieve the congested eastern territory of an equivalent amount of train service. The recommendation was put in effect at once.

8. In conferences with the Priorities Committee of the General Munitions Board it has taken steps to expedite material required in the construction of locomotives and cars.

9. It has arranged for the great simplification of the accounts relating to Government transportation, which greatly expedites the movement of Government freight, and for a central accounting bureau through which the centralization of all transportation accounts against the Government are to be handled.

10. It has submitted to the War Department a simplified basis for military war tariffs and forms of waybilling and assessing freight charges on Army impedimenta.

11. It has prepared designs for armored cars and special equipment for hospital and troop train service, and has arranged to build sample cars for them.

12. It has prepared complete routing charts for the use of the Government in moving troops between military posts and to mobilization points, cantonments, and points on the Mexican border and Atlantic and Gulf ports, whereby 2,052,418 troops have been moved to date in 36,735 passenger and 10,640 freight cars, assembled in 3,603 special trains, winning the following commendation of Q. M. Gen. Chauncey D. Baker:

One million troops have been mobilized without the slightest disturbance to commercial traffic, and if the public knew what the railroads have done, the self-sacrifice, the long hours the various heads of the roads have put in, there would be no criticism * * *.

And from Secretary of War Baker this:

Commenting on the work done by the railroads in connection with the mobilization, Mr. Baker said figures now available show that since early in August, when large troop movements began, the roads have transported 502,000 soldiers to various points without any serious derangement of their regular passenger schedules and at the same time have absorbed an enormous additional freight traffic brought on by war conditions.

"This strikingly illustrates," he added, "the patriotic cooperation of American railroads with the Government, and also the tremendous capacity of American railways." (New York Herald, Sept. 24, 1917.)

13. It has devised great simplification of accounts and has systematized settlements between the Government and carriers, eliminating large volumes of correspondence and red tape. Under these simplified plans the accounting for the movement of troops and thousands of cars of their impedimenta has been handled without friction or interference with the ordinary business of the carriers.

14. In has created a subcommittee on express transportation, composed of the vice presidents of the American, Wells-Fargo, Adams, and Southern Express Companies, to coordinate the work of their companies with the general problem of transportation.

15. It has moved 134,653 cars of building material and supplies to cantonments for the Government and 10,282 cars for account of the United States Shipping Board, a total of 144,935 cars, in such a way as to merit the following commendation of Col. I. W. Littell, in charge of the construction of cantonments, on September 5:

In the construction of the cantonments to date 50,000 carloads of material have been transported and been delivered at the sites—an enormous tax on the already overburdened railroads of the country. The railroads, however, have given splendid service. All Government orders have been given precedence and the lumber and other supplies needed have been rushed to the cantonments in record time.

SOME THINGS THE WAR BOARD HOPES TO DO.

1. To abolish crosshaul of coal. The attention of the Fuel Administration was directed on the 22d of November to the great importance of making a survey of present contracts and methods of purchases and shipment of coal, so as to shorten the rail haul from mines to consumers and to eliminate as far as possible all crosshauling of coal by the railroads. This recommendation, accompanied by a plan following that devised in England for the same purpose, carefully worked out under the direction of the War Board, was repeated on December 19, and if carried out will greatly reduce unnecessary car mileage and promote the free movement of coal to an incalculable degree.

2. To remove a fruitful cause of congestion by securing coordination of Government shipping agencies. A method of notifying railroads of the necessities of the several departments of the Government, by means of certified car orders and a special waybill envelope, was inaugurated. The indiscriminate application of this system to many shipments not entitled to preference is largely responsible for the congestion of the eastern trunk lines, one of the most important of which finds that 85 per cent of its entire traffic is covered by preference envelopes. To relieve the congestion it has been necessary to suspend the operation of this plan pending action on the War Board's recommendation that a Government traffic director be appointed, who shall coordinate all agencies of the Government concerned with the shipment of freight, determine to what, if any, preference in movement they are entitled, and prevent conflicts in priority by routing all commercial as well as Government freight.

3. To produce greater improvement in the loading of freight cars. Much has been made, but much more is attainable. The loading of grain in bulk has been notably bad, but the effect of assistance promptly given by the Food Administrator is already showing

results. Present reconsignment privileges should be curtailed and charges therefor increased. This privilege has been the cause of vexatious delay in movement and unloading of equipment; great increases in the daily car movement of coal as well as other commodities can be secured by curtailing and penalizing the privilege, which, however, can be done only if and when approved by the Interstate Commerce Commission. The matter has also been taken up with the Fuel Administration. A reduction in free time allowed to unload cars before demurrage attaches and rapid, progressive increase in demurrage charges will greatly improve car movement and supply. Experience on the Pacific coast, where these measures have been adopted, proves the adequacy of the remedy. The cooperation of the public that was there secured should be obtainable elsewhere.

4. To curtail passenger travel greatly by imposition, through the appropriate agencies, of sufficiently restrictive rates.

5. To increase the common use of terminals of one carrier by another. The common use of terminals and running tracks under trackage contracts is by no means uncommon, and under the stress of threatened congestion the principle is being urged and increasingly used.

6. To interest Federal authorities in the paramount necessity of providing and conserving railroad labor, which we refer to hereafter in greater detail.

DIFFICULTIES THAT HAVE HAMPERED THE RAILROADS.

We have shown what the war board has done and what it hopes to do; it is not out of place to mention some of the obstacles in the way of securing greater transportation output.

1. The difficulties presented in handling a movement of freight exceeding by far anything ever experienced were greatly increased by the call to move over 2,000,000 troops, and thereafter to meet the demands created by their absence from home for facilities to visit their families and to permit their families to visit them. This stimulus and that of unparalleled industrial activity have steadily increased passenger traffic, which showed an increase of 23 per cent in October this year over last. The latest data available show increases of 6 per cent and 14 per cent, respectively, in mail and parcel-post traffic (years ended June 30, 1916 and 1917), and 20 per cent in express traffic (nine months of calendar years 1916 and 1917).

2. The serious congestion on eastern lines caused by the abuse of waybill preference envelopes by Government agents has already been mentioned.

3. The railroads have not motive power enough. Approximately 3,400 locomotives and 33,000 cars are still under order, the delivery of which has been deferred for military reasons. The National Government, recognizing its duty to its allies, determined that it was more necessary, first, that the needs of railways in France, which were to be used by our troops, for 2,331 locomotives, should be taken care of; second, that certain requirements of the British, for 296 locomotives, should be protected; and, third, and most of all, that Russia's requirements, for about 1,600, must be filled. We were told that we must take care of the transportation needs of Russia, and every energy was bent on that, and we were deprived of our loco-

OPERATION OF RAILROADS.

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16 GOVERNMENT CONTROL AND OPERATION OF RAILROADS.

tives and cars. Many of the 3,400 locomotives still undelivered were ordered by the eastern trunk lines now suffering so severely from congestion, for whose immediate relief 125 locomotives were drafted by the war board, not from lines that could spare them—because there are no lines in this condition to-day—but arbitrarily from lines outside the congested area. Our railroads, however, are determined to deal with their problems as best they can and get the largest use out of existing plant. We repeat what our executive committee has said publicly, that we believe the American railroads are getting as much service out of the existing plant as is possible by any form of management. There are, of course, more things we can yet do to increase efficiency and public service. These things we hope to do, with the assistance of our associates; we have not had a failure of cooperation by any railroad in the country. The support which we have had has been all that could be given under the most strict Government control. We have had the support of shippers and receivers of freight, of commercial bodies, manufacturers' associations, and State commissions. There have been differences of opinion, but when told that we had made up our minds, our constituents have gone along like good soldiers.

4. (a) By the impressment of steamships engaged in Atlantic coast traffic, of the Southern Pacific Co., Ocean Steamship Co., and Mallory and Clyde Lines, the railroads have been called upon to transport 962,000 tons of freight, in the last half of the calendar year, which heretofore has been transported by water.

(b) The New York, New Haven & Hartford, Boston & Albany, and Boston & Maine Railroads, serving New England, have actually transported 2,817,000 tons more anthracite and bituminous coal into New England this year than last, in response to the needs of that part of our country that heretofore have been supplied by ocean carriers plying between New York, Philadelphia, Baltimore, and Hampton Roads and New England points.

(c) During the first year's operations of the Panama Canal (September, 1914, to August, 1915, inclusive) 2,060,000 tons of freight were handled between Atlantic and Pacific ports of the United States. The vessels handling this traffic were attracted by bids for ocean bottoms in the trans-Atlantic trade at substantially any rate the owner might demand, and with the exception of about 70,000 tons of coal carried by United States Government in its own vessels, the 1916 traffic of the canal was negligible, and continues so; therefore the transcontinental railroads were obliged to furnish facilities to handle substantially all of the 2,060,000 tons above referred to without taking into account the large but unknown increase of traffic following the entry of the United States into the war. To move the above tonnage is equivalent to the constant monthly use during 1917 of 46,200 freight cars and 619 locomotives, or to the entire present freight traffic on about 5,000 miles of line.

5. The railroads are finding it increasingly difficult to keep their equipment, and particularly their locomotives, in proper repair and efficient condition, on account of the shortage of skilled labor. The selective draft and the attractions offered by such rates of pay in munition and Government plants as most of the roads are financially unable to meet has resulted in a depletion of the shop forces of the carriers, some reporting a shortage in numbers of as much as 12½ per

cent, and all reporting a much greater fall in efficiency due to the necessity of recruiting with unskilled men. The war board has publicly called attention to these matters and has also suggested to Government agencies possible measures of relief, which so far have not been granted. It should not be forgotten that the increased movement of passengers, troops, mail, parcel post, and freight has been accomplished with forces greatly depleted as to number and weakened as to efficiency.

We quote outside views of the war board's work in unifying the operations and coordinating the facilities of American roads:

1. Secretary of War, Annual Report 1917, page 40, says:

A special committee of the American Railway Association was appointed to deal with questions of national defense, and the cooperation between this committee and the department has been most cordial and effective, and but for some such arrangement the great transportation problem would have been insoluble. I am happy, therefore, to join the Quartermaster General in pointing out the extraordinary service rendered by the transportation agencies of the country, and I concur also in his statement that "Of those who are now serving the Nation in this time of stress there are none who are doing so more wholeheartedly, unselfishly, and efficiently than the railroad officials who are engaged in this patriotic work."

Commenting on troop movements, the Secretary also says:

This strikingly illustrates the patriotic cooperation of American railroads with the Government and also the tremendous capacity of American railways. (New York Herald, Sept. 24, 1917.)

2. The Quartermaster General of the Army, Annual Report, 1917, pages 64 and 65, says:

The special committee on National Defense is a voluntary organization of the railways, serving purely through a spirit of patriotism. Its activities have been extended far beyond what was originally contemplated even for the military service. The railroads of the country are operated practically as one continental system, with the result that the congestion which would have been intolerable without such an organization has been in every case ameliorated and in many cases completely removed. The railroads' war board has been in practically continuous session at Washington since April 23. No more patriotic or self-sacrificing body of men is at this time serving the Government.

* * * * *

It has extended to the distribution of power between the railroads, the adjustment of passenger-train service in accordance with national requirements, has furnished personnel and material for rehabilitation of the railways in France, has aided in every way possible in the great national endeavor which has now become the duty of every citizen of the country.

3. Report of Special Committee on Public Ownership and Operation as Contrasted with Private Ownership and Operation of Public Utilities, 1917, to the National Association of Railway Commissioners, pages 14, 15, and 17:

The fine sense of duty on the part of the leaders of the country's transportation systems that prompted this resolution deserves our respect and praise. We believe, moreover, that this resolution must also be considered as a most important document in American railroad history. The pledge of these men that they will operate their properties as a "continental railway system," that they are merging during the war "all their merely individual and competitive activities" in the effort to produce a maximum of national transportation efficiency," opens a wide outlook. It must be remembered that it is the executive heads of the railroads who thus realize that the highest national transportation efficiency can be given only through the united operation of a continental railway system.

* * * * *

The express transportation system, the coal transportation problem, the food supply, the prompt movement of Government war supplies, the grain movement, the troop movement—all these matters were made the subject of special orders and recommendations by the committee, which, in all cases, were promptly obeyed by the carriers. The action of the railroads' war board is undoubtedly effective, and therefore desirable. It is also superior, in fact if not in law, to any orders of the State or Interstate Commissions. There is no reason to believe that the new system, once its need and efficiency are established, will be abolished, and if it is an improvement over existing instrumentalities it should not be abolished.

4. The Interstate Commerce Commission, in its annual report December 1, 1917, pages 64 and 65, says, after referring to the organization of the railroads' war board:

Without attempting to detail the activities on the part of the railways through this organization it will suffice here to say that they have responded to and supported the executive committee, which in an earnest way has attempted to deal with the vexatious and troublesome questions and to meet the unprecedented demands upon the railways.

EXHIBIT 4.

LEGISLATION SUGGESTED.

This committee, being charged with the responsibility of increasing the transportation facilities of the railroads in the present emergency, has dealt only with immediate needs. We have not, therefore, undertaken to bring to your attention various considerations for the development of the railroads which have been from time to time during recent months urged upon Senator Newlands's joint committee which has been investigating the whole railroad problem.

This committee had the honor recently to submit to Senator Newlands some suggestions of the immediate help which the Government could give to the railroads. These suggestions were as follows:

The immediate appointment of a traffic officer to represent all important Government departments in transportation matters with whom the railroads can deal, to secure active Government cooperation, the prompt and orderly transportation of the Government traffic, and avoid the excessive use of preference orders, which congest traffic instead of facilitating it.

Most of the railroads need more locomotives immediately and enough new cars to replace those worn out. There are approximately 3,800 locomotives and 33,000 cars still on order undelivered for American railroads. The railroads expect to provide the capital. Priority orders are essential for prompt delivery of such equipment.

Approximately 2,000 locomotives and 150,000 cars, in addition to those now on order, are necessary for early construction to meet the requirements of next year. This is no more than the railroads usually require every year, and at present prices represent a cost of approximately \$500,000,000. While a number of the railroads are able to purchase their quotas of such equipment without aid, it is apparent that because the United States has necessarily occupied the investment market for war loans, as evidenced by the recent request of the Secretary of the Treasury that no new private financing shall be undertaken without conferences with him, the railroads generally can not next year provide through their usual channels for the capital requirements for the acquisition of equipment and other possible additions to plant. They invoke, therefore, the cooperation and aid of the Government, through the Treasury Department and the Federal Reserve Board, to secure for them, on their own individual credit, the new capital found by the Government to be necessary not only for enlargement of plant but for renewing maturing obligations.

Immediate increase in rates as defined by the Interstate Commerce Commission special report to meet increasing operating expenses and strengthen railroad credit are necessary in eastern territory, and may become necessary in other territories.

Railroad men drafted to be enrolled and assigned to railroad service until actually needed for military service.

To the extent that legislation, if any, is needed to give effect to these requirements, such legislation is now suggested.

SPECIAL REPORT OF THE INTERSTATE COMMERCE COMMISSION.

WASHINGTON, D. C., December 1, 1917.

To the Senate and House of Representatives:

The act to regulate commerce requires the commission to transmit to the Congress such recommendations as to additional legislation relating to regulation of commerce as the commission may deem necessary. Under this mandate the commission submits the following special report, supplementing its annual report, with reference to transportation conditions as affecting and affected by the war in which the United States is now engaged:

The railroads of the country came into being under the stimulus of competition. From the outset their operation and development have been responsive to a competition which has grown with the growth of population and industry. This competitive influence has been jealously guarded and fostered by State laws and constitutions as well as by the Federal law. The keenness of rivalry naturally drew to the front those who were quick to seize and resolute to retain every available point of vantage for their respective roads. Terminals, if confined to exclusive use, were not only of strategic importance but profit-yielding assets. Out of competition grew rate wars, pooling, mergers, and consolidation into systems, as well as the rebating and other preferential treatment of shippers which the act to regulate commerce was primarily framed to prevent.

In that act the Congress, accepting the competitive principle as salutary, has thrown about it prohibitions against compacts for the pooling of freights or divisions of earnings of different and competing railroads, and, while the original act is but the nucleus of the act we now administer, that prohibition has remained unchanged.

But original act and successive amendments were alike framed in times of peace and for times of peace. They looked to protection of the shipper and the public against unjust or unfair treatment by the carrier, and not to protection of the Nation and its commerce in time of war by utilization of all the forces and resources of its transportation systems to their fullest extent.

Since the outbreak of the war in Europe, and especially since this country was drawn into that war, it has become increasingly clear that unification in the operation of our railroads during the period of conflict is indispensable to their fullest utilization for the national defense and welfare. They must be drawn, like the individual, from the pursuits of peace and mobilized to win the war. This unification can be effected in one of two ways, and we see but two.

The first is operation as a unit by the carriers themselves. In the effort along this line initiated early in this year they are restricted

The express transportation system, the coal transportation problem, the food supply, the prompt movement of Government war supplies, the grain movement, the troop movement—all these matters were made the subject of special orders and recommendations by the committee, which, in all cases, were promptly obeyed by the carriers. The action of the railroads' war board is undoubtedly effective, and therefore desirable. It is also superior, in fact if not in law, to any orders of the State or Interstate Commissions. There is no reason to believe that the new system, once its need and efficiency are established, will be abolished, and if it is an improvement over existing instrumentalities it should not be abolished.

4. The Interstate Commerce Commission, in its annual report December 1, 1917, pages 64 and 65, says, after referring to the organization of the railroads' war board:

Without attempting to detail the activities on the part of the railways through this organization it will suffice here to say that they have responded to and supported the executive committee, which in an earnest way has attempted to deal with the vexatious and troublesome questions and to meet the unprecedented demands upon the railways.

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Approximately 2,000 locomotives and 150,000 cars, in addition to those now on order, are necessary for early construction to meet the requirements of next year. This is no more than the railroads usually require every year, and at present prices represent a cost of approximately \$500,000,000. While a number of the railroads are able to purchase their quotas of such equipment without aid, it is apparent that because the United States has necessarily occupied the investment market for war loans, as evidenced by the recent request of the Secretary of the Treasury that no new private financing shall be undertaken without conferences with him, the railroads generally can not next year provide through their usual channels for the capital requirements for the acquisition of equipment and other possible additions to plant. They invoke, therefore, the cooperation and aid of the Government, through the Treasury Department and the Federal Reserve Board, to secure for them, on their own individual credit, the new capital found by the Government to be necessary not only for enlargement of plant but for renewing maturing obligations.

Immediate increase in rates as defined by the Interstate Commerce Commission special report to meet increasing operating expenses and strengthen railroad credit are necessary in eastern territory, and may become necessary in other territories.

Railroad men drafted to be enrolled and assigned to railroad service until actually needed for military service.

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The railroads of the country came into being under the stimulus of competition. From the outset their operation and development have been responsive to a competition which has grown with the growth of population and industry. This competitive influence has been jealously guarded and fostered by State laws and constitutions as well as by the Federal law. The keenness of rivalry naturally drew to the front those who were quick to seize and resolute to retain every available point of vantage for their respective roads. Terminals, if confined to exclusive use, were not only of strategic importance but profit-yielding assets. Out of competition grew rate wars, pooling, mergers, and consolidation into systems, as well as the rebating and other preferential treatment of shippers which the act to regulate commerce was primarily framed to prevent.

In that act the Congress, accepting the competitive principle as salutary, has thrown about it prohibitions against compacts for the pooling of freights or divisions of earnings of different and competing railroads, and, while the original act is but the nucleus of the act we now administer, that prohibition has remained unchanged.

But original act and successive amendments were alike framed in times of peace and for times of peace. They looked to protection of the shipper and the public against unjust or unfair treatment by the carrier, and not to protection of the Nation and its commerce in time of war by utilization of all the forces and resources of its transportation systems to their fullest extent.

Since the outbreak of the war in Europe, and especially since this country was drawn into that war, it has become increasingly clear that unification in the operation of our railroads during the period of conflict is indispensable to their fullest utilization for the national defense and welfare. They must be drawn, like the individual, from the pursuits of peace and mobilized to win the war. This unification can be effected in one of two ways, and we see but two.

The first is operation as a unit by the carriers themselves. In the effort along this line initiated early in this year they are restricted

by State and Federal law, and the idea is the antithesis of that which heretofore has controlled their activities. Their past operations have been competitive, although since the Hepburn Act, and especially since the Mann-Elkins Act, the prescription by this commission of reasonable maximum rates and charges for rail carriers subject to the act and the exercise of its power to require abatement of unjust discrimination or undue prejudice have in great degree restricted that competition to the field of service. But whether or not perpetuation of the competitive influence is desirable under a system of Government regulation, it is apparent that operation of our railroads as a unit involves the surrender by each of exclusive use of terminal facilities, surrender at times of profitable traffic to other carriers, and acceptance of less profitable traffic, with resultant loss of revenue, wherever economy of movement or greater freedom from congestion would dictate that course if the various carriers were, in fact, but one.

The alternative is operation as a unit by the President during the period of the war as a war measure under the war powers vested in him by the Constitution and those which have been or may be conferred by the Congress.

As bearing upon the alternatives thus stated, it will be recalled that since the beginning of the war in 1914 the traffic offered to and moved by the railroads has increased enormously. Prior thereto there had been occasional periods of car shortage, usually restricted in territory, but it may be said that from 1907 down to 1916 the number of cars in the country exceeded the demand. This subject is treated in our annual report.

The sudden, unforeseen, and unprecedented demand for transportation occasioned by the war placed a strain upon the facilities and equipment of the railroads which they were not and are not prepared to meet. There was created a need for immediate and extensive additions to existing facilities and equipment. This need is coincident with demands upon capital, as well as upon labor, manufactures, and natural resources, such as we have never known. Important additions and betterments will require new capital.

The railroads propose essentially that we allow increases in freight rates of such magnitude that their increased earnings will attract investors, by dividends declared or by the prospect of dividends, in competition with securities issued by Federal, State, and municipal Governments, public utility corporations, and industries organized and operating primarily for gain as distinguished from public service. Some of the latter have yielded large profits since the outbreak of the war.

An attempt to secure new capital would come at a time when the rising cost of living has made it difficult for those dependent for support upon their earnings to meet their current expenses; after the absorption by American capital of two-thirds of the American securities owned abroad prior to August 1, 1914, the railroad securities returned to this country alone amounting to from \$1,700,000,000 to \$2,000,000,000; after financing in this country of loans to our present allies; and after subscription for almost \$6,000,000,000 of Liberty loan bonds.

Even if the railroads have more money, the immediate construction of necessary facilities and equipment could not readily be effected.

Labor is scarce and the cost is mounting. So with materials and supplies. Car and locomotive builders are largely engaged in producing equipment needed abroad, both by our allies and by our own forces in the conduct of the war. The steel and other materials needed for such construction, as well as the labor, are also needed in other phases of the conflict. Under such conditions, and pending the acquisition of such additional facilities and equipment, it is indispensable that those now in existence should be used to their fullest capacity, primarily for the uses which are most vital to the country's defense and welfare, but without unnecessary hindrance to the industry and commerce of our people, upon which their ability to contribute toward the success of the war so largely depends.

The act to regulate commerce was not enacted to meet such a situation. The carriers have the right to demand at our hands, and it is our duty to approve, just and reasonable rates sufficient to yield fair returns upon the value of the property devoted to public use after necessary expenditures for wages, fuel, and supplies, reasonable expenditures for maintenance, renewals and betterments properly chargeable to operating expenses, and appropriate depreciation. Measured in dollars, the gross revenues of the carriers during the past and current fiscal years exceed any in their history. But what the dollar will buy in labor, material, and supplies is substantially less.

We are sensible of the vital and imperative need of the hour that our railroads shall not be permitted to become less efficient or less sufficient. We realize the gravity of a serious breakdown of our transportation facilities. It is unthinkable that this breakdown would be permitted if it could be prevented. Increased charges for carriage, if found necessary to take care of unavoidable increases in operating expenses, would not at this time bring new capital on reasonable terms in important sums.

In our opinion the situation does not permit of temporizing. All energies must be devoted to bringing the war to a successful conclusion, and to that end it is necessary that our transportation systems be placed and kept on the plane of highest efficiency. This can only be secured through unification of their operation during the period of the war.

If the unification is to be effected by the carriers they should be enabled to effect it in a lawful way. To that end, in our judgment, the operation of the antitrust laws, except in respect of consolidations or mergers of parallel and competing lines, as applied to rail and water carriers subject to the act to regulate commerce, and of the antipooling provision of section 5 of that act, should be suspended during the period of the war and until further action by the Congress. In addition they should be provided from the Government Treasury with financial assistance in the form of loans or advances for capital purposes in such amounts, on such conditions, and under such supervision of expenditure as may be determined by appropriate authority. As a necessary concomitant the regulation of security issues of common carriers engaged in interstate commerce should be vested in some appropriate body, as has been recommended in our annual reports. The rights of shippers for reasonable rates and nondiscriminatory service under the present jurisdiction of the commission need not be seriously interfered with by such unified

control. Some elastic provisions for establishment of new routes would probably be needed.

If the other alternative be adopted and the President operates the railroads as a unit during the period of the war there should be, in our opinion, suitable guaranty to each carrier of an adequate annual return for use of the property, as well as of its upkeep and maintenance during operation, with provision for fair terms on which improvements and betterments made by the President during the period of his operation could be paid for by the carrier upon return to it of the property after expiration of that period.

HENRY C. HALL, *Chairman.*

Attest:

GEORGE B. MCGINTY, *Secretary.*

WASHINGTON, D. C., *December 1, 1917.*

To the Senate and House of Representatives:

The special report of the majority of the commission leaves unsaid some things which should be plainly stated if prompt and sure relief is to be brought to the present transportation situation. That the lack of adequate railroad service, particularly in eastern territory, is serious at the present time, and is a cause of grave concern for the coming winter months needs no demonstration. Everyone knows it who knows anything about present business conditions. That the industries of the country engaged in making war materials, as well as those not so occupied, requires the very best service which can be given by the railroads is also clear. I fully concur in the statement of the majority report that "it is necessary that our transportation systems be placed and kept on the plane of highest efficiency," and also that "this can only be secured through unification of their operation during the period of war." But the majority report takes the position, at least by implication, that this unification may "be effected by the carriers" themselves. With that judgment I wholly disagree.

The carriers' cooperative effort at the present time is in charge of the "executive committee of the special committee on national defense of the American Railway Association." This committee in its public announcements calls itself the Railroad War Board. It is the fifth committee that the railroads have had in Washington to deal with the transportation situation since November, 1916. The first two of those committees were given no real authority, although the commission was advised by the executives that they had been given full power, or as it was expressed in the case of the first committee, "all the power of the executives." These committees, therefore, were unable to cope with the situation, despite earnest and praiseworthy efforts of their individual members who were hampered by the unwillingness of certain railroads, acting under the restraint of executive influence, to carry out their instructions. These facts have been reported by the commission (Car Supply Investigation, 42 I. C. C., 657). In that report both the majority and the minority expressed the view that the situation could be improved by a committee of railroad officers to act in cooperation with this commission

if the committee were given plenary power by all the railroads. In apparent response to that suggestion a third committee was sent to Washington in January, 1917, but it also had not been given the promised power and was therefore not received. In February, a fourth committee was sent to Washington to enforce certain car-service rules. Not all of the railroads believed that these rules were workable and hence the agreement giving power to this committee was incomplete and inadequate. With this experience behind it the American Railway Association, on April 11, 1917, formed its special committee on national defense, and centered the chief authority in its executive committee. The resolution by which this committee was formed recites that the railroads of the United States pledged themselves, with the Government of the United States, with the governments of the several States, and with one another, that during the present war they would "coordinate their operations in a continental railway system, merging during such period all their merely individual and competitive activities in the effort to produce a maximum of national transportation efficiency."

It was understood that the coordination of railway operations in a continental railway system meant that cars would be used interchangeably and sent where they were most needed; that track and terminal facilities would be opened up to all railroads so as to relieve congestion; and that locomotives would be at once requisitioned from some of the strong and less burdened railroads for use on the important lines which have been unable to give efficient service largely because they were badly in need of motive power. Yet as late as November 24 the carriers' committee made an announcement from which the following is quoted:

The Railroads War Board to-day adopted revolutionary measures in order to relieve the congestion of traffic on the eastern railways. It directed "that all available facilities on all railroads east of Chicago be pooled to the extent necessary to furnish maximum freight movement." The effect will be that to the full extent that conditions render it desirable these railways will be operated as a unit, entirely regardless of their ownership and individual interests.

The operating vice presidents of the eastern lines have been appointed a committee to operate as a unit all the lines involved, and have been given instructions and authority to adopt all measures which in their judgment may be necessary to relieve the present situation and assure the maximum amount of transportation. * * *

An important part of the plan adopted for the operation of the eastern lines is that of placing at their disposal the facilities of railways in other territories to such extent as may be necessary.

These measures—the pooling of cars, the operation of railways as a unit, the placing of facilities at the disposal of railways in other territories as needed—are essential steps in the coordination of railway operations "in a continental railway system," using the phrase of the resolution of April 11, but were not taken until November 24.

I do not wish to be understood as saying that the carriers' committee has not accomplished results; nor that the shippers have not co-operated with the carriers to get greater service from the available equipment, for the heavier carloading has been a very material factor of improvement. But our experience with railroad committees during the past year makes me believe that no voluntary committee can accomplish what the situation demands. One of the principal reasons is that the element of self-interest, the traffic influence, is a

persistent factor in postponing and resisting measures that seek to disregard individual rights in the effort to secure transportation results as a whole. The "merely individual and competitive activities" and the established operating practices have their effect, despite directions or recommendations that have no sanction to enforce them except a voluntary agreement which is very general in character. There runs also in the activities of these committees the self-evident purpose to do whatever appears to be necessary to prevent the governmental authority from acting. For these and other reasons which it is not necessary to state I can not concur in a report to the Congress which apparently acquiesces in a continuation of control over the transportation situation by a committee appointed by the carriers themselves. The suggestions with reference to the antitrust laws, the antipooling provision of section 5 of the act, the desirability of Government loans for capital purposes, and the regulation of security issues, undoubtedly have merit, but in my judgment their enactment into law will not make it possible for any committee appointed by the carriers to secure the full measure of transportation service which the present conditions demand.

The "unification" needed if our transportation systems are to be "placed and kept on the plane of highest efficiency," is the unification of the present diversified governmental control. At the present time there are several Federal agencies authorized by law to issue orders or directions with respect to transportation. This commission, by the car-service act, approved May 29, 1917, was given very broad powers to issue summary directions with respect to the movement, distribution, exchange, interchange, and return of cars. The priority director, designated by the President for that purpose under the act approved August 10, 1917, is authorized to direct that traffic essential to the national defense shall be given priority in transportation, and he has made certain orders of that character. The transportation of troops and material of war, under the amendment to the act to regulate commerce, approved August 29, 1916, is required upon the demand of the President to be given preference over all other traffic in time of war, and by direction of the Army and Navy Departments and the United States Shipping Board preference orders have been given for the transportation of a very large tonnage of war materials and supplies of all kinds. The administrations controlling fuel and food, to which adequate transportation is of course vital, have taken an active interest in the movement of those commodities through their appointed agents. Under this diversified control the carriers are not able to meet the requirements of the increasingly heavy tonnage which must be moved. In consequence the industries devoted to war purposes and those engaged in their normal business are suffering. There is no institution in which regularity of operation is more requisite than in transportation, but railroad operation is approaching a chaotic condition. A coherent plan must be worked out which shall provide for both the needs of the Government in the energetic prosecution of the war and the needs of general commerce. It is imperative that war material be given preference in transportation, but the financial sinews of war depend in large measure upon the successful operation of our manufacturing plants and business establishments.

I concur in the view that "the situation does not permit of temporizing," but I am convinced that the strong arm of governmental authority is essential if the transportation situation is to be radically improved. That authority must be unified to make possible action that is both vigorous and consistent. If the President elects to exercise the power given him, under the act approved August 29, 1916, to take possession and assume control of the transportation systems, I believe that vastly improved transportation conditions can be promptly secured. For this course legislation assuring the carriers a fair return may be appropriate. If the President does not so elect, it is my judgment that the authority over the regulation of railroad operations now vested in the several agencies referred to, with such amplification as may be necessary, should be promptly centralized by act of Congress. All of the forces now at work upon the problem, including the carriers' executive committee and its numerous subcommittees, could be at once utilized under a single governmental administrative control.

C. C. McCHORD, *Commissioner*.

INTERSTATE COMMERCE COMMISSION,
Washington, December 26, 1917.

To the ACTING CHAIRMAN,
Committee on Interstate Commerce,
United States Senate.

SIR: In compliance with the request made in a communication addressed by the chairman of your committee to this commission under date of December 21, I transmit herewith such response to the questions there contained as it has been possible to prepare within the limited time allotted.

Very respectfully,

HENRY C. HALL, *Chairman*.

QUESTIONNAIRE SUBMITTED TO COMMISSIONERS.

ITEM I.

Information called for.—Table showing the gross and net operating income of all operating railways, stating each separately for the years 1912, 1913, 1914, 1915, 1916, and 1917.

Modification.—That aggregates for all Class I roads¹ be given for each of the years 1912 to 1917, and that the detail by roads be given for the latest annual report; that is, December 31, 1916.

NOTE.—Owing to consolidations, etc., since 1912, comparisons by years and by roads would be valueless unless figures of constituent companies were compiled to compare with present company. (The N. Y. C. R. R., a consolidated company after Jan. 1, 1915, is an illustration.) To combine these figures for the constituent companies would entail a volume of study and work, making it impossible to obtain figures within the time limit set.

¹ Class I roads are roads having annual operating revenues over \$1,000,000. They comprise about 97 per cent of the total operating revenues and 92 per cent of the total operated mileage of the United States. Class II roads are those having annual operating revenues between \$100,000 and \$1,000,000. They constitute about 24 per cent of the total operating revenues and about 6 per cent of the total operated mileage. Class III roads are those having annual operating revenues below \$100,000.

Class I roads.¹

Year ended June 30—	Railway operating revenues.	Railway operating income.	Year ended June 30—	Railway operating revenues.	Railway operating income.
1917.....	\$3,791,651,529	\$1,061,814,427	1914.....	\$3,031,326,963	\$692,330,572
1916.....	3,381,597,866	1,024,381,299	1913.....	3,108,361,215	816,510,793
1915.....	2,871,563,047	716,476,186	1912.....	2,805,006,544	736,466,326

¹ See accompanying statement, which includes similar information, by roads, for the year ended Dec. 31, 1916.

ITEM II.

Information called for.—Table showing aggregate market value of stocks and bonds of all operating railways, stating each separately for each of the above years, and the average of the period, eliminating duplicate stocks and bonds—i. e., intercorporate holdings.

Modification.—It is not possible in less than several months to compile figures which will fully comply with this request. Such data as could be prepared are submitted as affording a basis for an approximation of the desired information. In order to make any response to this query within the time allowed it was necessary to apply the methods described in the attached formulæ. The results produced are therefore little better than rough estimates.

STOCKS.

TABLE A.—*Stocks of all steam roads which were quoted on the New York Stock Exchange in the years indicated, as shown by the Financial Chronicle.*

	1912	1915	To Dec. 14, 1917.
Par value of stocks quoted ¹	\$4,574,587,200	\$4,741,422,100	\$4,790,851,900
Market value of the same stocks ¹	\$5,035,839,506	\$4,485,433,601	\$3,786,001,000
Percentage of market value to par value.....	110.08	94.60	79.03

¹ Par value shown herein constitutes 79.34 per cent for 1912, 75.09 per cent for 1916, and 75.87 per cent for 1917 of total par value of stocks of all steam roads (Class I, Class II, and nonoperating subsidiaries) in the hands of the public as shown in reply to Item VIII.

² Market value was determined by striking an average between the highest and lowest quotations during the year as shown by the Financial Chronicle. This average was assumed to be a mean quotation for the year and was applied to the par to obtain the market value.

TABLE B.

	1912	1916	1917
Par value of stocks of all steam roads (Class I, Class II, and nonoperating subsidiaries) in hands of public on June 30, as shown in reply to Item VIII.....	\$5,766,093,888	\$6,314,570,354	¹ \$6,314,570,354
Market value of the same stocks determined by applying the percentage secured in Table A to above figures....	6,347,316,152	5,973,683,555	4,990,404,951

¹ Necessary to use 1916 figures; those for 1917 are not available.

BONDS.

TABLE C.—*Bonds (of issues of \$10,000,000 or more outstanding) which were quoted on the New York Stock Exchange in the years indicated as shown by the Financial Review and Poor's Manual.*

	1912	1916	To Dec. 14, 1917.
Par value of bonds quoted ¹	\$5,466,060,876	\$5,705,932,750	\$6,127,816,350
Market value of the same bonds ¹	\$5,049,923,953	\$5,086,381,475	\$5,156,623,981
Percentage of market value to par value.....	93.12	89.14	84.15

¹ Par value shown herein constitutes 58.64 per cent for 1912, 56.93 per cent for 1916, and 61.15 per cent for 1917 of total par value of bonds of all steam roads (Class I, Class II, and nonoperating subsidiaries) in the hands of the public as shown in reply to Item VIII.

² Market value was determined by striking an average between the highest and the lowest quotations during the year as shown by Poor's Manual of Railroads for 1912 and 1916, and the Financial Chronicle for 1917; this average was assumed to be a mean quotation for the year and was applied to the par to obtain the market value.

TABLE D.

	1912	1916	1917
Par value of bonds of all steam roads (Class I, Class II, and nonoperating subsidiaries) in the hands of public on June 30, as shown in reply to Item VIII..	\$9,321,506,762	\$10,021,730,075	¹ \$10,021,730,075
Market value of these same bonds determined by applying the percentage secured in Table C to above figures.....	8,680,187,097	8,933,370,193	8,433,285,862

¹ Necessary to use 1916 figures; those for 1917 are not available.

STOCKS AND BONDS.

TABLE E.—*Figures in Tables B and D combined.*

	1912	1916	1917
Par value of stocks and bonds of all steam roads (Class I, Class II, and nonoperating subsidiaries) in hands of public, June 30.....	\$15,087,600,650	\$16,336,300,429	¹ \$16,336,300,429
Market value of the same stocks and bonds.....	15,027,503,249	14,906,953,748	13,423,690,813

¹ Necessary to use figures; those for 1917 are not available.

ITEM III.

Information called for.—Table showing aggregate dividends paid by all railroads in each of the said years and average for the period, stating each separately.

Modification.—Can not be given for 1917. Would suggest that the aggregate only for all Class I roads be given for each year 1912 to 1916, ending June 30, and the detail by roads for one year. Dividends declared, not actual payments, have been used as the only measure of the effect in the year's income account.

Note.—See note under Item I.

FORM III-a.—*Aggregate dividends declared—Class I roads.*

Year ended—	Amount.	Year ended—	Amount.
Dec. 31, 1916 ¹	\$306,070,530	June 30, 1914.....	\$376,098,785
June 30, 1916.....	281,936,371	June 30, 1913.....	322,300,406
June 30, 1915.....	259,809,520	June 30, 1912.....	339,964,855

¹ See accompanying statement, which includes similar information, by roads, for the year ended Dec. 31, 1916.

ITEM IV.

Information called for.—Table showing aggregate interest paid by railways, showing each separately, in each of said years, and average for the period.

Modification.—Can not be given for 1917. Would suggest that the aggregate only for all Class I roads be given for each year 1912 to 1916, ending June 30, and the detail of roads for one year. Interest accrued, not actual payments, have been used as the only means of the effect upon the year's income account.

FORM IV.—*Interest accrued—Class I roads.*

Year ended—	On funded debt.	On unfunded debt.
Dec. 31, 1916 ¹	\$406,822,451	\$15,212,196
June 30, 1916.....	399,349,125	15,066,312
June 30, 1915.....	387,029,566	27,509,366
June 30, 1914.....	373,296,354	35,958,511
June 30, 1913.....	368,134,889	23,045,616
June 30, 1912.....	359,881,461	16,735,942

¹ See accompanying statement, which includes similar information, by roads, for the year-ended Dec. 31, 1916.

ITEM V.

Information called for.—Table naming the railway companies which during the said period have averaged a dividend of 4 per cent on stock, also giving the dividend paid for each year by each company.

Modification.—We can name the individual companies which declared 4 per cent or more dividends on common stock, showing what the same company paid on preferred, for the year ending December 31, 1916, Class I roads only.

Class I roads.

[Year ended Dec. 31, 1916.]

Road.	Rate of dividend on common stock.	Rate of dividend on preferred stock.
Atchison, Topeka & Santa Fe Ry. Co.....	6	5
Southern Pacific Co.....	6	.....
Chicago, Milwaukee & St. Paul Ry. Co.....	8	7
Chicago, Burlington & Quincy R. R. Co.....	8	.....
Chicago & North Western Ry. Co.....	7	8
Great Northern Ry. Co.....	7	.....
Northern Pacific Ry. Co.....	7	.....
Union Pacific R. R. Co.....	10	4
Minneapolis, St. Paul & Sault Ste. Marie Ry. Co.....	8	7
Oregon Short Line R. R. Co.....	7	.....
Chicago, St. Paul, Minneapolis & Omaha Ry. Co.....	7	7
Duluth, Missabe & Northern Ry. Co.....	100	.....
El Paso & Southwestern Co.....	6	.....
Kansas City Southern Railway Co.....	.....	4
Duluth & Iron Range R. R. Co.....	25	.....
Fort Worth & Denver City Ry. Co.....	12	.....
Bingham & Garfield Ry. Co.....	31.42	.....
Louisiana Western R. R. Co.....	15	.....
Nevada Northern Ry. Co.....	45	.....
Vicksburg, Shreveport & Pacific Ry. Co.....	.....	5
Houston East & West Texas Ry. Co.....	6	.....
Cripple Creek & Colorado Springs R. R. Co.....	41	.....
Colorado & Wyoming Ry. Co.....	145	.....
Pennsylvania R. R. Co.....	6	.....
New York Central R. R. Co.....	5	.....
Baltimore & Ohio R. R. Co.....	5	4
Pennsylvania Co.....	8	.....
Philadelphia & Reading Ry. Co.....	15	.....
Delaware, Lackawanna & Western R. R. Co.....	20	.....
Pittsburgh, Cincinnati, Chicago & St. Louis Ry. Co.....	5	5
Lehigh Valley R. R. Co.....	10	10
Michigan Central Railroad Co.....	4	.....
Central R. R. Co. of New Jersey.....	12	.....
Delaware & Hudson Co.....	9	.....
Philadelphia, Baltimore & Washington R. R. Co.....	6	.....
Pittsburgh & Lake Erie R. R. Co.....	30	.....
New York, Chicago & St. Louis R. R. Co.....	.....	15
Elgin, Joliet & Eastern Ry. Co.....	4	.....
Vandalia R. R. Co.....	4	.....
Maine Central R. R. Co.....	6	5
Buffalo, Rochester & Pittsburgh Ry. Co.....	5	6
Bessemer & Lake Erie R. R. Co.....	150	.....
New York, Ontario & Western Ry. Co.....	1	6
Chicago, Indianapolis & Louisville Ry. Co.....	4½	4
Hooking Valley Ry. Co.....	4	.....
West Jersey & Seashore R. R. Co.....	5	.....

Class I roads—Continued.

[Year ended Dec. 31, 1916.]

Road.	Rate of dividend on common stock.	Rate of dividend on preferred stock.
Central New England Ry. Co.....	2	10
New York, Philadelphia & Norfolk R. R. Co.....	12	.....
Cumberland Valley R. R. Co.....	8	16
Kanawha & Michigan Ry. Co.....	5	.....
Lehigh & New England R. R. Co.....	10	.....
Lehigh & Hudson River Ry. Co.....	14	.....
Port Reading R. R. Co.....	10	.....
Detroit & Toledo Shore Line R. R. Co.....	8	.....
Buffalo & Susquehanna R. R. Corporation.....	5	4
Staten Island Rapid Transit Ry. Co.....	20	.....
Detroit & Mackinac Ry. Co.....	5	5
Southern Ry. Co.....	.....	4
Illinois Central R. R. Co.....	8	.....
Louisville & Nashville R. R. Co.....	7	.....
Norfolk & Western Ry. Co.....	7½	4
Atlantic Coast Line R. R. Co.....	6	5
Central of Georgia Ry. Co.....	5	6
Nashville, Chattanooga & St. Louis Ry.....	6½	.....
Mobile & Ohio R. R. Co.....	12	.....
Cincinnati, New Orleans & Texas Pacific Ry. Co.....	.....	5
Alabama Great Southern R. R. Co.....	8	7½
New Orleans & Northeastern R. R. Co.....	4	.....
Richmond, Fredericksburg & Potomac R. R. Co.....	59	50
Georgia Southern & Florida Ry. Co.....	.....	5
Charleston & Western Carolina Ry. Co.....	5	.....
Alabama & Vicksburg Ry. Co.....	7	.....
Atlanta & West Point R. R. Co.....	6	.....
Western Ry. of Alabama.....	6	.....

¹ In addition 2½ per cent on second preferred stock.

ITEM VI.

Information called for.—Table naming railway companies which during the said period have averaged a dividend less than 4 per cent on stock, giving the dividend for each year by each company.

Modification made.—Individual Class I companies which declared less than 4 per cent dividend on common stock or on preferred stock for the year ending December 31, 1916.

Class I roads.

[Year ended Dec. 31, 1916.]

Road.	Rate of dividend on common stock.	Rate of dividend on preferred stock.
Chicago Great Western R. R. Co.....	.....	2
Colorado & Southern Ry. Co.....	.....	2
Morgan's Louisiana & Texas R. R. & Steamship Co.....	2	.....
Arizona & New Mexico Ry. Co.....	3	.....
Cleveland, Cincinnati, Chicago & St. Louis Ry. Co.....	.....	3½
Wabash Ry. Co.....	.....	1
Butland R. R. Co.....	.....	2
Bangor & Aroostook R. R. Co.....	3	.....
Cincinnati Northern R. R. Co.....	3	.....
Ulster & Delaware R. R. Co.....	3	.....
Chesapeake & Ohio Ry. Co.....	2	.....
Washington Southern Ry. Co.....	3½	.....

ITEM VII.

Information called for.—Table showing the investment in road and equipment for each of said years of railway companies, giving each separately.

30 GOVERNMENT CONTROL AND OPERATION OF RAILROADS.

Modification.—Aggregate road and equipment combined can be given for Class I and Class II roads and their subsidiaries for each year 1912 to 1916 (June 30). This is for the entire United States only, because of complications arising from leased lines or other subsidiaries.

FORM VII.—Investment in road and equipment—Class I and Class II roads and their nonoperating subsidiaries.

Year ended June 30—	Amount.	Mileage represented.
1916.....	\$17,525,576,908	239,392.31
1915.....	17,247,101,881	237,272.11
1914.....	16,936,697,840	235,985.60
1913.....	16,351,639,266	233,456.23
1912.....	16,004,744,966	229,902.66

ITEM VIII.

Information called for.—Table showing par value of all stocks and bonds for each of said years, stating them separately and eliminating duplications.

Modification.—This is impossible except for the United States as a whole because of duplications.

FORM VIII.—Capitalization in hands of public (eliminating duplication)—Class I and Class II roads and nonoperating subsidiaries.

Year ended June 30—	Stock.	Funded debt.
1916.....	\$6,314,570,354	\$10,021,730,075
1915.....	6,125,570,387	10,181,932,193
1914.....	6,011,404,923	9,708,292,002
1913.....	5,810,231,391	9,519,900,055
1912.....	5,766,093,888	9,321,506,762

ITEM IX.

Information called for.—Statement showing the amount of traffic being handled by the railway companies at the present time, as compared with the previous years—1915, 1916, and 1917—or so much of said period as can be furnished, separating freight and passenger traffic.

Modification.—We can give tonnage and ton-miles, passengers and passenger-miles, for the year ending June 30, 1916, and prior years, but no figures for 1917 are available. This is interpreted as being wanted for the aggregate of the roads and not for individual roads.

FORM IX.—Class I roads.

Year ended June 30—	Number of passengers.	Passenger-miles.	Number of tons carried.		Ton-miles.
			Originated on road.	Total.	
1916.....	968,887,967	33,645,908,150	1,151,187,321	2,093,092,757	339,870,328,676
1915.....	936,368,539	31,789,928,187	925,606,847	1,684,659,517	273,913,006,569
1914.....	1,002,350,385	24,566,985,414	1,023,131,101	1,843,216,056	284,924,749,718
1913.....	983,692,468	33,875,085,958	1,067,798,112	1,915,001,926	297,722,528,603
1912.....	944,265,173	32,316,262,549	926,470,814	1,684,994,748	259,981,628,198

ITEM X.

Information called for.—Statement showing relative amount of freight and passenger equipment including cars and locomotives for each of said years, dividing freight cars into classes and indicating increase in locomotive capacity.

Modification.—We can give number of various types of cars, freight and passenger, separately; but locomotives are not so separated. Figures for the year ending June 30, 1916, and prior years are available. None for 1917. This is understood to be not for individual roads but for all roads.

Class I roads.

Class.	Year ended June 30—				
	1916	1915	1914	1913	1912
Box cars.....	1,014,219	1,029,882	1,032,931	1,021,917	990,169
Flat cars.....	120,393	127,596	132,378	134,500	124,304
Stock cars.....	82,123	84,966	81,268	77,022	75,282
Coal cars.....	875,316	872,971	871,653	840,718	824,287
Tank cars.....	9,462	9,161	8,235	7,927	7,470
Refrigerator cars.....	51,610	52,299	48,764	43,271	30,650
Other freight-carrying cars.....	83,256	81,980	87,786	84,178	78,625
Total freight-carrying cars.....	2,236,379	2,258,856	2,263,015	2,209,533	2,140,687
Passenger-train cars.....	51,670	52,690	51,373	49,660	48,537
Number of steam locomotives.....	60,790	61,882	62,215	60,892	58,748
Aggregate tractive capacity.....	1,989,132,700	1,970,295,300	1,947,603,716	1,858,747,211	1,728,363,247

XI. To what cause or causes do you attribute delays and congestions in traffic?

Answer. The answer to this question must embrace consideration of three factors: (a) Unprecedented volume of traffic and changes in traffic conditions; (b) inequalities in operating efficiency; (c) lack of coordinated governmental regulation.

(a) Unprecedented volume of traffic and changes in traffic conditions: The volume of traffic demanding movement has exceeded and exceeds by far that of any former period. The large manufacturing centers of the country are largely in the territory east of the Indiana-Illinois State line and north of the Ohio and Potomac Rivers. Some of those centers are also the principal railroad "gateways" through which traffic to or from other territories must move. There has been a great increase in manufacturing and other industrial activity in eastern territory. This has resulted in a very large tonnage of fuel and raw materials inbound and finished products outbound. In consequence there has been a concentration of cars moving to and from these industrial centers. Through those centers, as railroad "gateways," a large tonnage is moved (1) for domestic use, (2) for export. For illustration, coal for Michigan moves from mines in territories south and southeast of Toledo over lines running through Toledo and through Detroit. With the local facilities for handling traffic at those points already under a heavy burden the tonnage of coal for points in Michigan is delayed until it can be moved through. A considerable part of that coal before reaching Toledo has had to move through Cincinnati, where it has met the same experience. Manufacturing in New England was greatly expanded immediately following the outbreak of the war in Europe, accompanied by a demand for movement of materials and fuel that has not been met and a serious congestion on the railways. Most of the vessels formerly engaged in coastwise service and many of those on the Great Lakes were withdrawn from their usual activities, thus throwing an additional large volume of traffic upon the railroads.

With regard to traffic for export the tonnage moved over the rail lines since the latter months of 1915 has been greatly in excess of that carried at any time prior to the war in Europe. By far the greater part of this tonnage has been transported to the north Atlantic ports, and it has been moved through or from the large industrial centers, such as Pittsburgh, where it has met the accumulating traffic local to those centers. Thus the changes in traffic conditions have resulted in a preponderating flow of tonnage from the West and the South into eastern territory converging first at the industrial centers and later at the north Atlantic ports.

These, with other contributing factors, such as shortage of labor, failure of some consignees to remove their freight from cars and warehouses, and plethora

of demands for shipments for the Government and those having contracts with the Government, have been the principal causes of congestion so far as changes in traffic conditions are concerned.

(b) *Inequalities in operating efficiency*: The increased demands for transportation, under changed conditions, have served to show both the strength and the weakness of the railroad systems. Some of them were prepared for a larger business. Others found their facilities inadequate and have been almost overwhelmed by traffic demands, showing in consequence operating costs out of proportion to the increased tonnage handled. In the matter of equipment, locomotives have been relatively more important than cars, and the lines that have had a substantial margin of strength in motive power have been much more successful in meeting the demands than those which have been weaker in that respect. But with full recognition of these differences in facilities and equipment the fact can not be overlooked that some railroads are much better operated than others. There are conditions in the situation which can not be otherwise accounted for.

(c) *Lack of coordinated governmental regulation*: The present regulation of transportation conditions and of matters necessarily affecting transportation is committed to several agencies authorized by Congress. It has the inherent weaknesses of a diversified control, no agency having complete authority to do what the situation requires. The fact must be recognized that the freight of all classes now requiring transportation can not be successfully carried unless operating practices are so systematized as to get the maximum use of the available facilities. It is clear that unnecessary requirements for preferential movement must contribute to delays and congestions, and, while expedited service is imperative in certain cases, better results in the long run will be secured from a centralized regulation to promote general operating efficiency.

XII. What changes in methods of administration have been adopted within the past year to relieve congestion of freight and increase efficiency?

Answer. We refer to what is said on pages 61 to 68 of our thirty-first annual report to the Congress, recently submitted, under the caption "Transportation conditions." Since that report was prepared the railroads' executive committee has expanded its efforts by arranging for diversion of export traffic to south Atlantic and Gulf ports; by organizing an operating committee to unify more completely the operations of the roads in the eastern district; and by transferring locomotives from western and southeastern roads to eastern roads and coal-carrying roads reaching Hampton Roads. The transfer of locomotives to the roads carrying coal to Hampton Roads is aimed at relief for the fuel shortage in New England.

XIII. What further changes, if any, would you advise?

Answer. (a) A single governmental control of railroads, under the direction of the President and with appropriate guaranties to the owners, for the period of the war.

(b) A complete unification of all facilities, especially of terminals and equipment. A larger number of locomotives can be drawn from the less-burdened lines for use in clearing the congestion in eastern territory. More of the empty cars constantly accumulating there can be moved to the South and West, thus relieving track and yard space in eastern territory and furnishing a greater supply of cars in the originating territories.

(c) The removal of competition for traffic, passenger, and freight will make possible a more effective use of facilities. Every available route should be used to its maximum economical capacity, and cross hauling of freight that moves in large volume should be avoided or restricted as far as may reasonably be done.

(d) Immediate survey of conditions of inland and coastwise water transportation. There are possibilities in water transportation which, if fully utilized, can be made an important factor in relieving the rail lines. The enlarged Erie Canal, for example, is nearing completion. It may be possible to increase the number of barges for the canal and boats for the Great Lakes, so that those arteries of commerce can afford relief upon the opening of navigation. Transportation on the navigable rivers and the development of coastwise service are equally important. In this connection it is noted that the Shipping Board favors the construction of shipyards in the South for rail-transportation reasons in part. It is, of course, important that new manufacturing activities shall be located, if possible, in the territories which are relatively free from traffic congestion.

(e) Diversion of as great an amount of export tonnage as possible to the southeastern and Gulf ports. This will result in substantial relief to the lines

in eastern territory. It will require action by the Army and Navy Departments, the Shipping Board, and the allied Governments in arranging ship sailings.

(f) The improvement in car loading, as a result of the response of the shippers to the necessity for conserving equipment, has been very substantial. This can be further developed and also extended in the direction of more prompt unloading. In the case of some railroads the traffic departments, which ordinarily seek to increase the carriers' traffic patronage, were in part diverted to the efforts to secure greater car efficiency. The result was a marked increase in tonnage carried per car and per train, as well as in mileage per car per day.

(g) A survey should also be made of the possibility of developing transportation by trolley lines and auto trucks. There is a field for this service, already partly utilized, for short hauls to and from industrial centers.

The ACTING CHAIRMAN. What effect upon the scope or nature of this inquiry under this resolution, Senator Cummins, do you think will be had by the action of the President in taking over the railroads of the country under resolutions and laws existing at the time?

Senator CUMMINS. That question is a little bit difficult for me, if not embarrassing, Mr. Chairman, and I can only give you my personal individual view of it.

I believe with the commission that the only way we can meet the difficulties that we must overcome is through unification of the railroads and their operation and management, and a single system, and I am in hearty accord with the action of the President in so far as that policy is concerned. I have not believed, and do not believe now, according to our constitutional guide, that he has the power to do what he has done, and I was very anxious to give him the power in the right way. Having exercised the power, however—and there are different minds about that—I am not saying this in any captious way—but I suppose that so far as the taking over of the railroads is concerned that has become a rather academic question, but I do believe it is the policy of the committee, and ought to be the duty of Congress, to supplement the legislation now in existence with ample authority to accomplish the purpose he has in view.

Senator POINDEXTER. Senator Cummins, you are a member of the joint committee of the House and Senate which is inquiring into the transportation matter, are you not?

Senator CUMMINS. Yes.

Senator POINDEXTER. May I ask you whether or not that committee has had the members of the Interstate Commerce Commission before it and gone into their views as to the permanent policy of the country as to the railroads?

Senator CUMMINS. We have not had the members of the Interstate Commerce Commission before us at all, or any member of it, as I remember. We have had a great deal of testimony—if it may be called testimony—relating to Government ownership and operation. There have been two or three very complete arguments, accompanied with facts, upon that subject, but not from the commission.

Senator POINDEXTER. Have the hearings before that joint committee been printed as yet?

Senator CUMMINS. I am informed that they have not been. After our return from California, we took up the hearings again in Washington and continued them for a week or more, and the latter hearings have not been printed, I am told. All of the hearings, up to the

beginning of this session, have been printed; but there would be probably nothing in those hearings that would be very helpful at this time. They all relate, in so far as Government ownership is concerned, to a permanent policy, and they are confined to arguments intended to show that that is the best policy for the Government to pursue, but they do not take up the details of the transformation and point the way for the legislation which would have to accompany Government ownership and operation.

Senator KELLOGG. Senator Cummins, when you say that question of taking over the railroads is now of course an academic question, there are other questions that of necessity the committee will have to consider, and additional legislation which may be recommended, and probably will be recommended by the President in his message to Congress. Your idea is that we should consider the whole subject of the questions raised by the commission's recommendations except the taking over, and any questions that may be raised by the communication of the President to Congress, is it not?

Senator CUMMINS. Continuing my answer and completing it, to the chairman's question, I think there is the subject of the necessary legislation. I think there is the question, including the question of compensation, which is a very vital and important one, and the only thing that has been done that would narrow the limits of the inquiry, or the range of the inquiry, is the determination that it is necessary to take them over.

The ACTING CHAIRMAN. Of course our proceedings are subject to the pleasure of the committee. Speaking for myself, as one member of the committee, as I recall the report of the Interstate Commerce Commission, it suggested that something would have to be done to help the railroad situation of the country, and suggested, among other things, that one thing which might be done would be for the Government to take control of the railroads, and the President has done that. That seems to be an accomplished fact—if he has the constitutional and legal authority to do it—and I assume that he has indicated also that he would appear before Congress and ask for certain appropriations to carry out the measure which he has initiated.

Senator KELLOGG. Appropriations or guarantees.

The ACTING CHAIRMAN. Guarantees, I believe is the way he put it, and it seems to me that about all there is left for Congress to do is to either grant or refuse the legislation which he asks us to pass upon, or the wisdom of the legislation he asks, as far as any inquiry into the subject of what is best to do with the railroads of the country is concerned.

Now, it seems to me our deliberations on that would be academic, because something has already been done. In my opinion the scope of the inquiry has been materially narrowed, and it is simply up to Congress to decide whether they will or will not grant the legislation to follow up what the President has done. But I suppose there is no objection to the committee getting all the light that it can from the members of the Interstate Commerce Commission and the managers of the railroads, or anybody else, for that matter. That is a matter that is subject to the pleasure of the committee. What is the pleasure of the committee?

Senator KELLOGG. I would like to suggest to the chairman that this information which the committee asks of the commission seems to bear right on that question very materially, of what guarantees the Government should make, and I suggest that we go ahead now and put in these tables, and by that time Senator Pomerene may be here, and he may want to take part in any general examination of the commission that may be had.

The ACTING CHAIRMAN. I think myself it would be proper at the beginning to make these tables a part of our proceedings, if you will make a motion to that effect.

Senator CUMMINS. Mr. Chairman, the tables, while they are very well prepared, are understandable to those who care to devote a good deal of time to their study. We are preparing information for the members of the Senate, and we ought to lay that information before them in the form in which it would be most accessible to them, and the easiest to comprehend and to handle, and I want, myself, to examine one or more members of the commission with regard to those tables.

The ACTING CHAIRMAN. Certainly there could be no objection to that. I thought we could put them in the record first and supplement them by examining the members of the commission afterwards.

Senator CUMMINS. I would have no objection to that.

(The tables referred to are here printed in full as follows:)

Table showing the railway operating revenues, railway operating income, interest accrued, and dividends declared for the year ended Dec. 31, 1916—
Class I roads.

Name of road.	Railway operating revenues.	Railway operating income.	Interest accrued.		Dividends declared.		
			On funded debt.	On unfunded debt.	On common stock.		On preferred stock.
					Rate.	Amount.	Rate.
Pennsylvania R. R. Co.	\$230,278,533	\$55,587,519	\$11,088,435	\$807,681	6	\$29,952,252	
New York Central R. R. Co.	223,261,590	70,611,615	28,870,850	617,036	5	12,466,611	
Baltimore & Ohio R. R. Co.	116,968,882	28,465,597	18,118,630	241,961	5	7,597,226	4
New York, New Haven & Hartford R. R. Co.	90,432,167	23,049,037	9,354,991	1,539,576			
Pennsylvania Co.	78,569,026	20,330,735	4,899,015	149,329	8	6,400,000	
Erie R. R. Co.	65,976,110	15,901,617	9,739,262	200,232			
Philadelphia & Reading R. Co.	60,440,247	23,816,362	1,983,460	431	15	6,372,255	
Boston & Maine R. R. (1)	19,198,793	4,809,410	12,512	3			
Do.	36,194,762	10,227,561	1,721,268	896,892			
Delaware, Lackawanna & Western R. R. Co.	51,590,899	17,114,563	6,156	16,316	20	8,444,060	
Pittsburgh, Cincinnati, Chicago & St. Louis Ry. Co.	50,706,435	12,015,745	2,893,533	61,808	5	1,879,790	5
Lehigh Valley R. R. Co.	48,859,909	12,279,777	3,711,209	42,065	10	6,080,170	10
Cleveland, Cincinnati, Chicago & St. Louis Ry. Co.	46,678,240	13,799,866	4,718,774	79,314			
Michigan Central R. R. Co.	46,418,790	14,076,169	1,768,138	225,804	4	749,456	1
Wabash R. Co.	37,721,104	11,671,449	3,162,546	11,332			
Central R. R. Co. of New Jersey	34,372,346	10,385,024	2,196,200	26,892	12	3,292,416	
Delaware & Hudson Co.	26,594,971	7,831,636	2,791,666	94,632	9	3,825,234	
Philadelphia, Baltimore & Washington R. R. Co. (2)	17,931,072	1,877,030	330,368	51,773	3	1,057,478	
Do.	24,043,353	4,272,386	685,166	179,843	2	802,760	
Pittsburgh & Lake Erie R. Co.	24,043,163	11,429,331	353,332	1,328	30	9,266,880	
Pere Marquette R. R. Co.	22,526,234	6,267,761	2,625,339	1,087,668			
Chicago & Eastern Illinois R. R. Co.	16,371,053	2,961,847	2,841,261	586,508			
New York, Chicago & St. Louis R. R. Co.	15,367,928	3,390,977	1,157,267	63	{		{
Long Island R. R. Co.	14,971,930	4,158,845	2,645,990	380,873	5		1,949,885
Elgin, Joliet & Eastern Ry. Co.	14,738,323	4,720,870	500,000		2 1/2		274,965
Vandalia R. R. Co.	13,330,043	3,093,125	769,810	50	4	400,000	
Maize Central R. R. Co.	12,824,676	3,492,567	848,992	8,127	4	594,556	
Buffalo, Rochester & Pittsburgh Ry. Co.	12,761,755	3,108,518	1,398,057	41,415	6	722,392	5
Western Maryland Ry. Co.	11,967,992	4,045,674	2,409,269	1,392	5	536,000	6
Bessemer & Lake Erie R. R. Co.	11,110,695	4,498,120	2,418,583	265,981			
Cincinnati, Hamilton & Dayton Ry. Co.	10,317,961	2,242,694	2,108,120	499,667	150	750,000	
Wheeling & Lake Erie R. R. Co. (3)	10,053,008	2,630,576	1,085,269	42,920			
Do.			49,900	541,507			

Table showing the railway operating revenues, railway operating income, interest accrued, and dividends declared for the year ended Dec. 31, 1916—
Class I roads—Continued.

Name of road.	Railway operating revenues.	Railway operating income.	Interest accrued.		Dividends declared.			
			On funded debt.	On unfunded debt.	On common stock.	On preferred stock.	Rate.	Amount.
Nashville, Chattanooga & St. Louis Ry.	\$13,519,598	\$3,421,601	\$779,305	\$3,471				
Mobile & Ohio R. R. Co.	12,229,643	2,813,273	1,520,193	46,484				
Cincinnati, New Orleans & Texas Pacific Ry. Co.	12,019,943	3,832,140	39,880	46,135				
Florida East Coast Ry. Co.	8,713,870	4,056,828	2,430,853	162,110				\$122,670
Virginian Ry. Co.	8,455,944	3,800,556	1,516,526	15				
Alabama Great Southern R. R. Co.	5,867,828	1,901,177	3,76,416					
Norfolk Southern R. R. Co.	4,699,172	1,503,243	866,516	3,624				253,526
New Orleans & Northeastern R. R. Co.	4,011,444	1,208,868	435,269					
Richmond, Fredericksburg & Potomac R. R. Co.	3,721,202	1,564,267	151,135	10				
Georgia R. R. Lessee Organization	3,453,069	1,027,810	89,183	47,902				1,481,425
Atlanta, Birmingham & Atlantic Ry. Co.	3,339,640	1,622,143	417,563					
Carolina, Clinchfield & Ohio Ry.	3,106,320	1,202,847	1,189,643	38,483				
Georgia Southern & Florida Ry. Co.	2,660,809	1,581,247	312,944	3,010				
New Orleans, Mobile & Chicago R. R. Co.	2,651,808	477,212	682,350	34,706				88,400
Charleston & Western Carolina Ry. Co.	2,629,370	648,022	243,400					
Gulf & Ship Island R. R. Co.	1,966,157	642,216	221,934	9,446				
Alabama & Vicksburg Ry. Co.	1,818,183	359,729	110,391					
Washington Southern Ry. Co.	1,808,779	723,467	160,000					
Louisville, Henderson & St. Louis Ry. Co.	1,781,114	628,780	174,021	8,621				
New Orleans Great Northern R. R. Co.	1,746,701	717,579	420,723	448				
Tennessee Central R. R. Co.	1,707,521	381,069	572,579	34,670				
Atlanta & West Point R. R. Co.	1,469,722	344,487						
Western Ry. of Alabama	1,265,275	320,039	69,435					
Southern Ry. Co. in Mississippi	1,170,528	178,381	13,978	716				
Coal & Coke Ry. Co.	1,150,430	168,979	205,334	94,546				
Virginia & Southwestern Ry. Co.	970,448	128,260	198,992	7				
Albany, Lyons & Santa Fe Ry. Co.	121,678,979	42,782,896	12,364,166	14,801				6,208,685
Southern Pacific Co.	121,461,981	38,905,977	11,707,160	25,302				
Chicago, Milwaukee & St. Paul Ry. Co.	110,000,080	31,377,298	15,995,311	31,510				8,109,206
Chicago, Burlington & Quincy R. R. Co.	109,191,264	39,096,988	6,900,493	753				8,867,128
Chicago & North Western Ry. Co.	97,978,844	27,835,871	9,368,309	4,388				1,791,600
Great Northern Ry. Co.	83,129,017	28,166,772	10,746,163	19,081				
Northern Pacific Ry. Co.	80,381,848	21,332,161	12,268,965	32,012				
Chicago, Rock Island & Pacific Ry. Co.	77,695,911	20,987,097	10,068,180	670,823				
Union Pacific R. R. Co.	68,060,374	26,312,464	7,422,436	34,234				
St. Louis-San Francisco Ry. Co. (S)	9,161,270	3,009,331	2,136,345	2,083				3,981,740

St. Louis & San Francisco R. Co.	41,709,798	12,089,401	8,947,413	293,026			
Mt. Lemmon, St. Paul & Northern P. Co.	34,446,028	13,946,980	8,773,915	67,000	7	1,764,476	7
Missouri Pacific R. Co.	34,473,084	13,749,940	8,558,061	16,064			
Oregon Short Line R. Co.	33,483,884	6,640,128	8,090,714	3,312	8	8,000,000	
Denver & Rio Grande R. Co.	26,960,974	11,886,072	8,276,847				
Texas & Pacific R. Co.	26,464,466	9,441,773	6,667,836	190,745			
Chicago, St. Paul, Minneapolis & Omaha R. Co.	20,835,637	6,580,068	1,061,638				
Missouri, Kansas & Texas R. Co.	20,835,386	6,186,861	2,296,065	901,864			
Missouri, Kansas & Texas R. Co.	19,860,269	6,186,861	3,182,961	184,064			
Chicago & Alton R. Co.	17,781,270	4,677,728	1,268,023	146,140	7	1,268,969	7
Chicago & Alton R. Co.	16,431,622	3,676,033	1,083,498	114			
Chicago & Alton R. Co.	15,131,692	3,676,033	1,083,498	114			
Chicago & Alton R. Co.	15,248,900	3,676,033	1,083,498	114			
Chicago & Alton R. Co.	14,567,646	3,676,033	1,083,498	114			
Chicago & Alton R. Co.	14,389,278	3,676,033	1,083,498	114			
Chicago & Alton R. Co.	12,614,004	3,676,033	1,083,498	114			
Chicago & Alton R. Co.	11,658,882	3,676,033	1,083,498	114			
Chicago & Alton R. Co.	10,766,945	3,676,033	1,083,498	114			
Chicago & Alton R. Co.	10,339,958	3,676,033	1,083,498	114			
Chicago & Alton R. Co.	9,188,164	3,676,033	1,083,498	114			
Chicago & Alton R. Co.	9,079,975	3,676,033	1,083,498	114			
Chicago & Alton R. Co.	4,384,570	3,676,033	1,083,498	114			
Chicago & Alton R. Co.	3,865,692	3,676,033	1,083,498	114			
Chicago & Alton R. Co.	7,284,632	3,676,033	1,083,498	114			
Chicago & Alton R. Co.	7,170,865	3,676,033	1,083,498	114			
Chicago & Alton R. Co.	6,052,375	3,676,033	1,083,498	114			
Chicago & Alton R. Co.	5,947,568	3,676,033	1,083,498	114			
Chicago & Alton R. Co.	5,215,851	3,676,033	1,083,498	114			
Chicago & Alton R. Co.	5,172,576	3,676,033	1,083,498	114			
Chicago & Alton R. Co.	4,883,870	3,676,033	1,083,498	114			
Chicago & Alton R. Co.	4,770,155	3,676,033	1,083,498	114			
Chicago & Alton R. Co.	4,515,562	3,676,033	1,083,498	114			
Chicago & Alton R. Co.	4,141,619	3,676,033	1,083,498	114			
Chicago & Alton R. Co.	3,933,970	3,676,033	1,083,498	114			
Chicago & Alton R. Co.	3,855,973	3,676,033	1,083,498	114			
Chicago & Alton R. Co.	3,750,688	3,676,033	1,083,498	114			
Chicago & Alton R. Co.	3,402,921	3,676,033	1,083,498	114			
Chicago & Alton R. Co.	2,720,704	3,676,033	1,083,498	114			
Chicago & Alton R. Co.	2,685,229	3,676,033	1,083,498	114			
Chicago & Alton R. Co.	2,142,164	3,676,033	1,083,498	114			
Chicago & Alton R. Co.	2,133,425	3,676,033	1,083,498	114			
Chicago & Alton R. Co.	2,121,217	3,676,033	1,083,498	114			
Chicago & Alton R. Co.	2,119,115	3,676,033	1,083,498	114			
Chicago & Alton R. Co.	1,913,079	3,676,033	1,083,498	114			
Chicago & Alton R. Co.	1,889,867	3,676,033	1,083,498	114			
Chicago & Alton R. Co.	1,807,163	3,676,033	1,083,498	114			
Chicago & Alton R. Co.	1,803,138	3,676,033	1,083,498	114			
Chicago & Alton R. Co.	1,060,813	3,676,033	1,083,498	114			

1. Three per cent on \$19,300 guaranteed stock; 2 per cent on \$431,100 guaranteed stock; 50 per cent on \$500,400 guaranteed stock; 44 per cent on \$3,568,200 dividend obligation; 44 per cent on \$3,568,200 dividend obligation; 50 per cent on \$1,794,300 dividend obligations.

Table showing the railway operating revenues, railway operating income, interest accrued, and dividends declared for the year ended Dec. 31, 1916—
Class I roads—Continued.

Name of road.	Railway operating revenues.	Railway operating income.	Interest accrued.		Dividends declared.		
			On funded debt.	On unfunded debt.	On common stock.	On preferred stock.	
					Rate.	Amount.	Rate.
Houston East & West Texas Ry. Co.	\$1,613,178	\$586,310	\$156,892	\$9	6	\$115,200	
Missouri, Oklahoma & Gulf Ry. Co.	1,602,156	63,391	373,893	2,129			
New Orleans, Texas & Mexico Ry. Co. (7)	1,253,415	351,416	13,040				
New Orleans, Texas & Mexico R. R. Co.	272,047	150,371	230,404	44,209			
Louisiana & Arkansas Ry. Co.	1,512,450	365,899	345,457	12			
Wichita Falls & Northwestern Ry. Co.	1,354,946	200,784	192,400				
Kansas City, Mexico & Orient Ry. Co. of Texas	1,354,681	43,252	70,200		41	310,370	
Cripple Creek & Colorado Springs R. R. Co.	1,354,675	617,258	122,585				
Missouri & North Arkansas R. R. Co.	1,310,935	216,339	112,894				
Kansas City, Mexico & Orient R. R. Co.	1,236,643	38,928	206,946				
Toledo, Peoria & Western Ry. Co.	1,217,665	111,496	47,520				
St. Louis, San Francisco & Texas Ry. Co.	1,179,160	117,020	94,762	18			
Mineral Range R. R. Co.	1,107,781	464,951	180,000		146	145,000	
Colorado & Wyoming Ry. Co.	1,085,222	325,869	1,067,470	4,575			
Utah Valley Ry. Co.	860,438	371,055	38,759				
Wichita Valley Ry. Co.	849,306	309,102	125,752				
Texas and Fort Smith Ry. Co.	826,082	403,111	77,672		3	83,100	
Arizona & New Mexico Ry. Co.	817,944	306,081	283,393	26,153			
Spokane International Ry. Co.							

- (1) Two reports rendered by the Boston & Maine R. R.; one for the prior company Jan. 1, to Aug. 30, the other for the receivers' operations Aug. 30, to Dec. 31.
- (2) Two reports rendered by Philadelphia, Baltimore & Washington R. R. account reorganization Sept. 15 (without change of corporate name), one covering period Jan. 1 to Sept. 15, and the other Sept. 15, to Dec. 31.
- (3) Two reports rendered by Wheeling & Lake Erie R. R., one an operating report of the receiver for the entire year, and the other the accrued interest, etc., of the prior company.
- (4) Two reports rendered by the Pittsburgh, Shawmut & Northern R. R., one an operating report of the receiver for the entire year, and the other the accrued interest, etc., of the prior company.
- (5) The property of the St. Louis & San Francisco R. R. Co. emerged from receivers' hands Nov. 1, 1916, as the St. Louis-San Francisco Ry. Co. Two reports were accordingly rendered, one for the receivers' operations and one for those of the new company.
- (6) The property of the Western Pacific Ry. emerged from receivers' hands July 13, 1916, as the Western Pacific R. R. Co. Two reports were accordingly rendered, one for the receivers' operations and one for the new company.
- (7) The property of the New Orleans, Texas & Mexico R. R. Co. emerged from receivers' hands Feb. 20, 1916, as the New Orleans, Texas & Mexico Ry. Co. Two reports; were accordingly rendered, one for the receivers' operations and one for the new company.

Senator LA FOLLETTE. Mr. Chairman, we have a motion pending, have we not, that we had better vote upon?

The ACTING CHAIRMAN. The motion of Senator Watson that we proceed with the hearings was agreed to. There is no other motion pending before the committee.

Senator CUMMINS. I am in favor of Senator Watson's motion to proceed with the inquiry.

Senator THOMPSON. Until 12 o'clock.

The ACTING CHAIRMAN. There is no motion before the committee at present. Senator Kellogg, do you wish to make a motion to incorporate these questions and answers in the record?

Senator KELLOGG. I would like to ask if the replies of the executive officials of the railways that were asked for at the same time are here?

The ACTING CHAIRMAN. The Chair is informed that they are in the printer's hands and are expected to be here any moment.

Senator POINDEXTER. Whether they are printed or not, Mr. Chairman, I ask that they be printed following the reports of the Interstate Commerce Commission in the proceedings of the committee.

Senator KELLOGG. That is, that both of them be put in the record?

The ACTING CHAIRMAN. Did you make that as a motion, Senator Kellogg?

Senator KELLOGG. Yes, sir.

The ACTING CHAIRMAN. Including Senator Poindexter's suggestion?

Senator KELLOGG. Yes.

(The motion was agreed to, and the matter referred to will be found in a previous part of this record.)

Senator POINDEXTER. Now, if I may be permitted to express an opinion, I think since we are here and have these busy men here from the Interstate Commerce Commission, and as Senator Cummins has some particular inquiries that he wants to make of them, I think we should call upon them and hear their statements.

The ACTING CHAIRMAN. Is it the pleasure of the committee that the Interstate Commerce Commissioners be called now?

(There being no objection, it was so ordered.)

Senator CUMMINS. There are four members of the commission here, and I suggest that they determine among themselves who will first appear.

The ACTING CHAIRMAN. Is the chairman of the commission present?

Commissioner HALL. Yes, sir.

The ACTING CHAIRMAN. Mr. Commissioner Hall, we will be very glad to hear in turn from all the members of your commission, and I suggest that you designate the order in which they shall appear, or as it may suit their convenience if they have any particular wish in the matter. If they have no particular wish, we will hear from you first, as chairman of the commission.

STATEMENT OF HON. HENRY C. HALL, CHAIRMAN INTERSTATE COMMERCE COMMISSION.

The ACTING CHAIRMAN. Mr. Hall is at the service of the commission, and I suggest that Senator Cummins open the inquiry.

Senator CUMMINS. Mr. Hall, do you prefer to make a statement in the order in which you may think best, or would you prefer that whatever you may say shall be said in answer to inquiries?

Commissioner HALL. Senator Cummins, the views of the commission have been expressed in its special report to Congress supplementing the annual report and, as far as was possible in the time allotted, in its response to 13 questions—I think there were 14 in number, but there were 13 in reality—addressed to the commission under date of the 21st instant.

Obviously the shortness of time and the many engagements which the commission has had have prevented as full a reply as might otherwise have been made. I may say that some of the questions calling for statistical information could not have been answered except with a force that we have not available, and an expenditure of time that would have been out of the question under the circumstances; for example, that with regard to the market value of securities—I think it is question No. 2. I am told by our statistical department that an answer to that question in the detail in which it is put would require the services of perhaps 150 expert men accustomed to the use of logarithmic tables for three or four months.

So what has been done—and I am requested to state this on behalf of those who have had charge of preparing these tables and answers—is to make such reply as would meet the gist and substance of what is thought to be the inquiry underlying the express question. For any inadequacy we can only submit the physical impossibility of full compliance.

This statement having been considered and made by the commission as a whole, I think I have no general statement to make, and will endeavor to reply to such queries as may be addressed to me.

Senator CUMMINS. Mr. Hall, before taking up the tables which your commission has kindly presented to the committee, I think it is first worth while, even under present conditions, to ask you to elaborate a little upon the railway situation. I think it is due to the Senate and to the country to have some further knowledge with regard to the reasons which lead the commission to the conclusions it announced in its special report under date of December 1. I call your attention to this paragraph, simply to furnish an initial point:

Since the outbreak of the war in Europe, and especially since this country was drawn into that war, it has become increasingly clear that unification in the operation of our railroads during the period of conflict is indispensable to their fullest utilization for the national defense and welfare. They must be drawn, like the individual, from the pursuits of peace and mobilized to win the war. This unification can be effected in one of two ways, and we see but two.

Will you state the difficulties and the deficiencies in transportation which came under your observation and which led you to the belief that the present system was inadequate to meet the demands of the country for war purposes and of commerce as well?

Commissioner HALL. Senator, an adequate reply to that question would, I presume, involve a review of all that has taken place since the outbreak of the war in Europe and, more especially, since this country was drawn into that war. The conclusions here expressed might be said to be a composite of the observations made from day to day of what was going on in transportation and of deductions such as

gradually grow in the mind of any man as to what seems to be the general trouble and what seems to be the prospect of rectification or cure. To single out any one particular fact from the many facts and attach to that fact its significance as compared to other facts would be a very difficult matter. It is like the experience that a lawyer has after 20 years of practice as compared with the experience and knowledge that a lawyer has when he is just out of the law school. It is the development of his thought and observation that he brings to a new case, and yet he could not assign, perhaps, to any particular part of his past experience the quality that enables him to deal more effectively with what comes before him now.

Stated very broadly, one may say that, physically, the railroads of this country are all one. Their rails connect throughout the country over 260,000 miles of road. The division between them is artificial, not physical, just as the division between the several States of the Union or the different counties of a State is political and not physical. There is this difference: The dividing line in the case of railroads is that drawn by ownership or control; but looked at as an instrumentality of transportation, the rails and what goes with the rails in the way of roadbed and tunnels and bridges and all the rest practically constitute an entity, stretching from one coast to the other, from the Canadian border to the Mexican border, and beyond, stopping only where they reach the oceans.

The difficulties that hinder the utilization of these rails to their fullest extent are not inherent in railroad operation. They result from a conflict of interest between competing roads, and they result also from certain statutory restrictions that the States and the Nation have seen fit from time to time to impose upon the operation of the roads. It is obvious that where the competitive influence existed from the start it can not be expected to disappear at the turn of a thumb, and where the carriers are restricted, as they are restricted by law, from pooling their freight or pooling their earnings to compensate the road which has the traffic and gives it up to another because the other happens to have its way clear, when the road which has the traffic has not its way clear it takes a very high spirit of patriotism indeed for the management of the railroad to see its revenues depleted without any sort of compensation for the surrender of traffic.

If you will take a railroad map and observe how the rails run, it is obvious that, particularly here in the East and in certain parts of the Middle West, there are a great many different ways by which one can go from one point to another, and it is also obvious that every road, no matter how circuitous it may be, is the shortest line from one point to another. Admiral Mahan has pointed out that the unstaked seas are nevertheless traversed by routes of traffic. So it is with railroad transportation in the United States. It has become the usage to send shipments through certain gateways. Those gateways are very often producing points. They are well known to all railroad men. The natural course of traffic is to move through those gateways. Now, when it happens that there is a large volume of traffic normally flowing through a producing gateway from a territory that is also producing, and then there is suddenly superimposed such an enormous business as has been brought upon the car-

riers of this country by the war in Europe, and, since we have been drawn into war, by our preparation for adequate participation in that war, the gateway becomes choked unless something is done to make it possible for traffic which does not necessarily have to pass through this gateway to pass around it by another and less encumbered line. It is obvious that if all the railroads of the country belonged to one owner, even if divided for convenience in operation into various districts, that owner, without a thought of the earnings of one particular line as compared with another particular line, would utilize all those lines to their maximum economic capacity.

In brief, the entire plant would be utilized regardless of the earnings of one part as against another of the plant, so as to reduce congestion to the minimum and keep the traffic moving. The congestion does not occur on the main track where the trains move. Transportation includes delivery, and in a sense the traffic capacity of a carrier may be said, at least so it seems to me, to be measured by its capacity to deliver, to get the cars unloaded and start them back with or for a fresh load.

So, generally speaking, the thought is this, that so long as the various railroad lines that constitute this continental whole, physical whole, are owned and operated by different companies, each responsible to its stockholders and its bondholders; and each seeking for traffic and depending upon that traffic over its own rails for its earnings and to meet its obligations—just so long as that continues, the owners of each of these segments will be striving to get that traffic and to have that earning. But the moment that the whole is operated as a whole, the traffic can be sent by the most direct practicable route. If there are fifteen channels available, three of them the main channels, and the three get choked, the other twelve will be utilized in so far as that controlling influence of capacity to deliver at destination can be taken care of.

So that the thought, reduced to its essentials, is really exceedingly simple. You have here a great plant. Its components are owned by a number of different companies and each of the companies is utilizing what it has to make its earnings meet its obligations. But looked at as a great engine or instrumentality of war preparation and war conduct, it seems to be plainly desirable that, whatever the original intent, it should now be utilized as though it were one plant and just in the way it would be utilized if it were one plant, with the greatest economic results.

I am not suggesting here the establishment of strategic lines for the purpose of coast defense or other strictly military purposes, important as that might become. I am speaking only of the utilization to best advantage of an existing transportation plant.

That is perhaps a rambling answer to your question, but it indicates what is the underlying thought in my mind—that here is a great plant, here is a great need, and the plant should be utilized to the fullest extent in the way it would be done if there were but one plant.

The ACTING CHAIRMAN. That has been accomplished by the order of the President in taking over these roads, has it not?

Commissioner HALL. That has made all these things possible; yes.

Senator WATSON. Wherein did the railroad managers fail in that respect to bring about perfect coordination?

Commissioner HALL. I have not suggested that they failed.

Senator WATSON. I am asking whether or not they did fail, and if so, in what respect.

Commissioner HALL. The railroads of this country got together in April, as you know, a few days after it was recognized by Congress that a state of war existed between this country and the Imperial German Government, and adopted a resolution in which they undertook to sink their individual and competitive interests—I am not quoting now—and to operate the roads as a continental system, and I think there were zealous and very effective efforts to bring about just that. An executive committee was appointed, the same committee that has now been selected by the Director General to assist him, and they have been exceedingly diligent ever since their appointment in dealing with this weighty problem and have accomplished very good results. They have been aided in that by the commission on car service, which as a subcommittee has accomplished very great results, but in doing so both have been hampered by the antipooling clause in the act to regulate commerce which makes unlawful the pooling of freights and the pooling of earnings. This made it impossible for them to compensate a road which by complying with their directions was deprived of revenues. So with the antitrust provisions; those limitations were there. It is true that as long as every road had paying traffic that it could handle that would not so much matter. But it has been necessary since the 1st of May to send between 225,000 and 250,000 empty cars out from this congested eastern district to the South and West. These have been carried by intervening carriers, not only with no revenue, but as a per diem expense charged against them on each foreign car to cover the rental thereof. They have done it in compliance with what amounted to nothing more than requests of the car-service commission. Those requests have been very specific. They have said to the Pennsylvania Railroad Co., for example, "Send so many empties within such a time to such a line," and it has been done.

Senator WATSON. Then your theory is that the Director General will have a certain power that the railway managers do not have, and that he can set aside the antipooling laws and can set aside the antitrust laws, and bring out a coordination that they could not because of the hampering effect of those laws?

Commissioner HALL. He does not set them aside; he is acting for the President. The President can not pool against himself, nor create a trust or combination against himself. It is not setting aside any law. It is all done through the exercise of the power conferred upon the President by the Constitution in time of war and by Congress for war times; putting him in a place where the restrictions of those statutes do not apply to him, because he can not combine against himself; he can not pool with himself; and he can not conspire with himself.

Senator POINDEXTER. Speaking of those empty cars that the railroads were required to carry, without revenue from the transportation of them, in what way was that different from the normal course of car service for the handling of traffic? What I mean is this, they were going to the south, as you say, undoubtedly to be loaded and return loaded. Was not that a case of normal conditions?

Commissioner HALL. No, sir; this moving was superimposed upon a normal return, the normal sending of empties. It was by express direction, the sending of cars which would not have gone to those regions, and the directions were very cheerfully complied with, almost without exception cheerfully and promptly complied with, and without compensation. It is true, I presume, although I have not any definite information on this point, that the car-service commission has tempered its requests by routing the movement in such way as, in so far as possible, to equalize the burden.

I take it that demands upon a given carrier, exceeding a reasonable proportion of empty to loaded cars, might have been the subject of representation and complaint which would have been considered, and that it has been necessary to keep some sort of relation between the loaded traffic and the empty movement. But the President, under the power now vested in him, can, I should imagine, if he see fit, pick out any road, and say, "Nothing but empties shall move on this, nothing but nonpaying business."

Senator POINDEXTER. But under normal conditions, how would the railroads have supplied cars for the transportation of these commodities for which those cars were intended?

Commissioner HALL. There would be a certain amount of movement of the empties to the producing regions, the originating regions, in order to get the loads and come back, and that movement has continued, as I understand it, during this year just ending.

Senator POINDEXTER. That is the normal movement?

Commissioner HALL. That is the normal movement, and on top of it there has been superimposed the abnormal and directed movement of over 225,000 empty cars. Carriers customarily keep a close check on their "interchange," as they term it, of loaded and empty cars at their junction points. These empty movements were ordered in addition to the normal interchange and were closely checked as such by the roads interested, who were advised of the orders as issued.

Senator POINDEXTER. What was the occasion for the superimposing of additional transportation of empty cars? Was there an abnormal demand for the transportation of commodities in certain localities that required abnormal transportation of empty cars to those localities?

Commissioner HALL. Looking at the railroad map, you can figure the West generally and the South generally as chiefly producing regions of, you might say, raw materials. Wheat is a raw material, for example, and lumber is a raw material, whereas in what is known as the official classification territory, north of the Potomac and Ohio Rivers and east of the Mississippi—that is only a very rough indication—is the main manufacturing region of the United States.

If you consider the manufacturers alone, the volume of raw material coming in would exceed the volume of the manufactured product going out, to the extent that the raw material does not wholly enter into the manufactured product, as, for example, limestone and the other things that go into the manufacture of steel. They exceed in weight the weight of the steel that goes out. So that the trend of traffic in this country, even when the water-borne freight was moving freely, was toward central freight association territory.

the Eastern States and, in particular, New England, which is not a producer of raw materials to any great extent.

That means a great many more cars coming in loaded, even in normal times, than go out loaded. That should be the case, even if the entire product of the New England mills went out by rail, but that product does not. It goes out by sea, a good deal of it. The coast is here, and since the war came on there has been an enormous exportation of grain, flour, and all sorts of munitions, and the development of munition factories. The great bulk of our shipments abroad have moved through the ports of Boston, New York, Philadelphia, Baltimore, and Newport News, although we have a coast-line stretch all the way to the end of Florida and around into the Gulf, with many good ports. For reasons which explain themselves, most of that coast has not been used, and the shipment has been mainly through certain of those ports which were themselves important consumers.

One result of that has been that the carriers leading into New York, and to a considerable extent, also, to Philadelphia, Baltimore, Boston, and Newport News, have been carrying an amount of traffic for export alone out of all proportion to what the carriers have been taking to other seaports that would have been used if there were bottoms available at those seaports. In addition to that, the boats have been withdrawn from the Great Lakes for one reason or another. Some have been commandeered by the Shipping Board. The more profitable use of bottoms elsewhere has withdrawn from the Panama Canal service those that since the opening of that canal had handled to a large extent certain parts of the traffic between the Pacific coast and the Atlantic coast. All that is gone.

The carriers by rail in this country have been called upon to take care of the traffic that they have been accustomed to have, plus the traffic that no longer moves in part or in whole by water, plus the demands from across the sea growing out of the war, plus the later demands incident to our great expenditures in preparation for doing our part on that side, and plus also the movement of something like 2,000,000 men since the 1st of August to various cantonments and ports of embarkation, of the materials that went into the construction of those cantonments, and of daily supplies for those cantonments. They have had to respond to the activities of the Shipping Board, and do so many, many other things that any attempt to enumerate them would be vain. But it is a perfectly tremendous increase in traffic, moving very largely along certain of these main-line routes. That has been met in part by a campaign for increased loading which has yielded very remarkable results, and for prompt loading and unloading, which has also yielded very remarkable results, and I think it is safe to say that there has been a greater degree of cooperation between shippers and carriers since we have gone into this war than at any time in the history of railroad operation in this country.

Senator POINDEXTER. Regarding the railroad situation, let me ask you just one other question, whether or not the President had taken over the control of the railroads, if the Government in its control of the shipping had called for the delivery of an amount of merchandise that would be shipped abroad at these various southern ports that you spoke of, was there anything in the railroad situation

that would have prevented the delivery of it at those ports instead of at these congested centers that you speak of?

Commissioner HALL. If a railroad is constructed for a certain volume of business and equipped to handle a certain volume of business, and suddenly has thrown upon it a greatly increased volume of business, it may find its terminals inadequate, and docks and warehouses lacking, and must take some time to adjust itself to that. But the question for the Government, of course, as to shipping was to put it where it would do the most good. One reason why the Gulf ports and the South Atlantic ports have been excluded has been because we had this problem of getting so much across the water, and every day of additional voyage for a vessel involves an additional day of voyage on the return trip. It has been a race with the submarine, in one sense, to keep the allies provisioned and supplied with munitions. Since our forces went over there we have had to provide for them, too, and it was not a question of the most desirable or economical thing; it was a question of doing the indispensable thing.

Recently an arrangement has been reached which will provide for a larger movement from the South Atlantic ports and even from Gulf ports. That is one of the things that has been done already to relieve the situation.

Senator POINDEXTER. The point I wanted to inquire about was whether or not there was anything in the railroad law or existing railroad control that interfered with that—I mean before the President took over the roads?

Commissioner HALL. I should not regard that as a prominent feature of the situation. I do not mean to say it would not have it effect, either. I would have to examine that carrier by carrier in order to analyze it. But the main trouble there has been that the boats were not at port and could not get there, and if you want to get stuff aboard you must send it to ports where there will be boats. For some six months or more you could not get export freight into these main ports unless you had already reserved your space, and had your permit that would entitle your shipment to be loaded.

Senator CUMMINS. Mr. Hall, I have a few inquiries to make, and I hope the members of the committee will indulge me while I pursue them, because I do not intend to take very long. I would like to have the information in rather a consecutive way. The initial fact is, according to your observation, I take it, that the railways under individual management are not able to take and move and deliver with reasonable promptness the traffic of the country.

Commissioner HALL. No, sir; I would not say that. They have been carrying not only their customary traffic, but a vastly increased traffic, and doing it with reasonable promptness, all things considered. They have been carrying more traffic than any railroads ever did in this country.

Senator CUMMINS. It is quite evident that I was either unfortunate in my question or that you misunderstood it. If there is a necessity for change in the system, it is because under the present system the railroads can not take and move and deliver the traffic that must be moved with reasonable promptness. If that is not true, why is there any necessity for a change?

Commissioner HALL. It is the continually increasing traffic, Senator. They are obliged now to operate under embargoes to a considerable extent. To that extent they are not taking everything that is offered. By utilizing their rails as one plant there is reason to hope that the embargoes could be relieved or removed, and that the movement could be consecutive even if not rapid.

Senator CUMMINS. I want to clearly understand you about that. I have assumed that the traffic of the country, in order to meet all our reasonable demands, ought to be moved and delivered more promptly than is now the case.

Commissioner HALL. Yes, sir.

Senator CUMMINS. That is true, is it not?

Commissioner HALL. Yes, sir.

Senator CUMMINS. Then it is true that the railroads under their present management can not take and move and deliver the traffic with promptness—the promptness that the situation requires.

Commissioner HALL. With desirable promptness, yes; I can say they do not.

Senator CUMMINS. The traffic you suggested a moment ago has very much increased in the last year or two?

Commissioner HALL. Yes, sir.

Senator CUMMINS. Can you give us an approximation of the increase in the last two or three years?

Commissioner HALL. The commission gets its tonnage information as to movement from the annual reports. Those for 1917 have not been filed. So we have no figures subsequent to the annual reports for 1916. Those figures are in the tables that lie before you. But as to the tonnage moved, we have an indication in the revenue returns which are made monthly. The railway operating revenues for 1916 were the greatest in the history of the carriers of this country. For 1917 they are very much greater. Take the eastern district, for example, for the first 10 months of this year the revenues will exceed by some \$142,000,000 those for the corresponding 10 months of the year 1916.

Senator CUMMINS. It is true that the traffic has increased in volume very much and that its direction and destination are somewhat abnormal on account of that.

Commissioner HALL. Yes; on account of the war. The natural trend of a great deal of it is toward the Atlantic coast and to the main ports of that coast.

Senator CUMMINS. You have suggested—and it is quite obvious—that a railway manager must feel some sense of obligation to his stockholders and bondholders and therefore can not be expected to voluntarily deprive his company of traffic or revenue, even though the movement of the traffic could not be promptly secured, and it is to eliminate that natural inevitable selfishness, and I am not speaking of it in a disparaging way—that you believe there ought to be Government operation, so that each of these roads can be used for the public good entirely, regardless of individual interests?

Commissioner HALL. Yes. I should not call it selfishness myself. It might be, in a railroad official, a sense of duty to his employers.

Senator CUMMINS. According to your observation, how far have the railroad managers, since the war began, indicated a willingness to deprive their respective roads of the revenue in order to promote the public good?

Commissioner HALL. Why, there are many individual instances all indicating a disposition to do that, as far as they thought they reasonably could. Recently there was a committee of executives appointed, known as the Pittsburgh committee, of which Mr. Thompson, vice president of the Baltimore & Ohio Railroad, is the chairman.

There was congestion at Pittsburgh. One of the first things that Mr. Thompson's committee ordered was that the Broadway Limited, the fast passenger train of the Pennsylvania, should be taken off; and the Pennsylvania very cheerfully took off that train, although the New York Central continued its competing train, the Twentieth Century.

That is just an illustration of what has occurred wherever those who are directing this saw a need for something that involved a sacrifice on the part of one carrier.

Senator CUMMINS. That is very remarkable, but do you know what has been done by concert of railway managers that tended to divert traffic from a line to which it naturally belonged to another in order to facilitate the movement of the business?

Commissioner HALL. By arrangement recently made with the Western Maryland a certain amount of the traffic would pass over the Western Maryland which otherwise would have passed over the Baltimore & Ohio. Twenty-five locomotives have been ordered into the Southeast to assist in getting coal to Newport News for movement by sea to New England, where there is a lack of coal, and the last figures I saw showed 17 of those 25 delivered. The western carriers have been called on to turn over a hundred engines at first, and I think more later on to the eastern roads to help out in that way.

Now, a locomotive is not only worth two times what it was two years ago, but in its earning capacity it is worth a great deal more than that.

Senator CUMMINS. None of these things could by any possibility be claimed to be a violation of either the antipooling law or the anti-trust law?

Commissioner HALL. I have known of no instance of such violation.

Senator CUMMINS. So, that if it were possible for the railway companies to divest themselves of all selfish interests, it would be possible to use these systems practically as one, without Government operation, would it not?

Commissioner HALL. Without Government operation; yes, sir; that was indicated in our special report to Congress.

Senator CUMMINS. And without the repeal of either the anti-trust law or the antipooling law?

Commissioner HALL. No, sir; I do not think so. They would have to be used to their fullest available capacity, if they were one plant.

Senator CUMMINS. That is just what I am trying to reach. But we all realize that it would be in the last degree unfair to expect, or to ask the railway managers to disregard the financial interests of their stockholders and the owners of the property in order to permit

a more rapid movement of traffic, and it is therefore your belief that there must be a superior power intervening that will eliminate that interest.

Commissioner HALL. Either that or the other alternative indicated in our special report, but that alternative, as has been suggested, is already in the past.

Senator CUMMINS. Now, do you believe the railway equipment of the country—and I includes in that cars, both freight and passenger, and locomotives and other things of that character—is sufficient to do the business that is now required to be done if the railways can be united in a single system and operated in the most economical and efficient way?

Commissioner HALL. That involving, of course, that terminals should be available in common as needed.

Senator CUMMINS. In every respect as a single road?

Commissioner HALL. Why, it seems to me, Senator, quite possible that the existing equipment might suffice for the immediate present. Of course, as rapidly as terminals are made more adequate, or the traffic is more widely distributed, it might be that equipment in excess of what is necessary to replace the obsolescent could be used to advantage. About 100,000 freight cars—a little over, probably—become obsolescent every year, and it takes that amount to replace them.

Senator CUMMINS. Is it your opinion that what might be called the road facilities, or terminals or sidetracks, and other things of that kind, are sufficient, if they can be used as parts of a single system?

Commissioner HALL. Well, Senator, that would be a matter of speculation. I have not studied any one of those terminals with that in view. They never have been so used. It seems very probable that they might be sufficient, at least for the present, in most cases. There might be individual spots here and there where they would have to be supplemented, but I should expect that with the existing equipment and the existing terminals very much greater results could be obtained by the operation of the plant as a whole, as distinguished from operation by competing entities.

Senator CUMMINS. I am leading up to this inquiry—eliminating the ordinary expense of maintenance, do you think that any considerable outlay on the part of the Government in the way of capital will be necessary in order to make the railway systems of this country united as they will be, sufficiently to do the business?

Commissioner HALL. I can only give you my personal view.

Senator CUMMINS. It is a very valuable opinion and I would like very much to have it.

Commissioner HALL. No; I do not think it is, under the circumstances.

Senator CUMMINS. It is one of the most vital things in this whole matter.

Commissioner HALL. Yes; but my personal view is not, and I can only give you my personal view. My personal view is that it would involve an expenditure on the part of the Government in either making good a guaranty or in actual outlay for acquisition of equipment or terminals, very much less than the estimates that one frequently hears.

Senator CUMMINS. It is your view, then, that we can look forward to Government operation without the fear of any great expenditure of money for the purpose of additions or betterments that would be charged to capital?

Commissioner HALL. The need of them might be demonstrated as operation went on, but perhaps none would be needed right away, except at a few ports, piers, and warehouses, and things of that kind.

Senator CUMMINS. Have you had under consideration the provisions that must be made, if the Government finds it necessary to add to the facilities and equipment of the railways—I do not mean in the ordinary operation and maintenance, but in addition, that would become a part of the capital of the railways?

Commissioner HALL. I have given thought to that subject; yes, sir.

Senator CUMMINS. What is your opinion with regard to the proper provision for that expenditure, if it becomes necessary?

Commissioner HALL. I do not know what the best way to work that out would be, but I can indicate as analogous the case where a tenant puts improvements on leased property with the understanding and arrangement that he shall be compensated for those improvements when the term ends, or, if they are of a character that can be removed, that he may remove them. In other words, they do not become fixtures and go with the realty, as a matter of course.

Senator CUMMINS. All these railway companies have outstanding mortgages which cover their property to secure their bonds?

Commissioner HALL. Yes, sir.

Senator CUMMINS. Have you considered what relation the expenditures, with regard to betterments and additions should bear to the mortgages on the property?

Commissioner HALL. I should think those betterments or improvements would naturally be for capital account, if made by the carrier, and if made by the Government as occupying and operating the roads for military necessity, might by appropriate provision remain out from under these preexisting mortgages.

Senator CUMMINS. Do you mean that these expenditures should be made a first lien upon the property?

Commissioner HALL. No, sir; I do not mean that at all. I mean that if the Government sees fit to put in some additional terminals, under arrangements such as I have suggested, or builds some warehouses or piers, even if that should be on railway property, prompted as that action would be by an emergency such as the President has recognized in taking over these railroads, there could be appropriate provision that those additions made by the Government upon the property would not be subject to the private contract made by or between the carrier and the bondholders, and would not go to enhance the security of those bondholders.

Senator CUMMINS. They would be of little value to the Government if it ceased to operate the railway property?

Commissioner HALL. That would depend upon what the addition or betterment was. It might chance to be a warehouse or pier that if not of value to one carrier would be of value to another carrier, after the storm has passed. It might consist of rails, or equipment, which would be of value anywhere; and, again, the improvement might be such as not to be severable. But, even so, supposing it should be of

little realizable value to the Government, after Government operation ended, the Government has a great task here to perform. It has its munitions to move and supplies to move, and all the rest, at heavy expenditure; and if it made some expenditure to better existing facilities and expedite movement, so as to better respond to its needs, the money so expended would not be wholly lost, any more than the money which goes into the shell or torpedo that perishes in the using. Even if that were so it would still seem to me a proper expenditure.

Senator CUMMINS. You will understand, Mr. Hall, that I am not taking this up with you in a controversial spirit.

Commissioner HALL. Yes, sir.

Senator CUMMINS. I am trying to get the information because that subject must be covered by legislation which will probably be at some time before this committee.

Commissioner HALL. Yes; it would seem that if the Government found it necessary to spend money for a betterment that was distinguishable from what was already there in the carrier's property, that betterment could remain on the carrier's property with suitable provision to enable the carrier to acquire it on reasonable terms after the Government possession is relinquished, but that meanwhile it would remain Government property, unaffected by any private contract, such as the mortgage that might have been put on the pre-existing property of the carrier. In fact this would never have been property of the carrier at all, unless at the end it should acquire it from the Government.

Senator CUMMINS. It would not be fair, would it, to compel the railroad companies to take this property and pay for it when the properties are restored unless it was of value to the railways in normal times?

Commissioner HALL. I should think not, Senator; and that is touched upon in the last paragraph of the special report as follows:

With provision for fair terms on which improvements and betterments made by the President during the period of his operation could be paid for by the carrier upon return to it of the property after expiration of that period.

Without imposing upon it the obligation of taking over a strategic line which might be built if the war should shift to these shores, or additions or betterments which would be of no use to it in its ordinary business.

Senator CUMMINS. Mr. Chairman, Senator Kellogg desires to ask a few questions at this point with regard to some matters that have been covered, and I think it would tend to a better study of the matter, if they were asked at this time, and my questions with regard to these tables be deferred until later.

The ACTING CHAIRMAN. Very well.

Senator KELLOGG. Commissioner Hall, I understood you to say that there have been enormous increases of traffic on the railroads owing to the war. Do you give in your tables any increase since 1916?

Commissioner HALL. We have not the returns officially for 1917. They will be in the annual reports for that year, which will come in within the next few months. After their receipt it will take some time to check and compile the results.

Senator KELLOGG. I notice the railway executives have stated in a return made here, that the increase of traffic during the six months of April to September, 1917, over the six months of 1916, on roads of class one, which include about 95 per cent, amounts to substantially 20.3 per cent.

Commissioner HALL. About 97 per cent, operating.

Senator KELLOGG. Well, 97 per cent, yes; that is, the railroads include about 97 per cent; it amounts to about 20.3 per cent. Have you looked into that question at all?

Commissioner HALL. Not to arrive at a definite comparison. The carriers are receiving their information currently, but it is called for by the commission only annually, and after it is received it takes time to compile it.

Senator KELLOGG. Well, there has been an enormous increase this year over last.

Commissioner HALL. Yes, sir.

Senator KELLOGG. This also gives an increase over 1915 of something over 50 per cent. Do you know whether that is substantially correct?

Commissioner HALL. I should not be at all surprised. I assume that it is correct, if it comes from that statement of the executives.

Senator KELLOGG. Now you also state that the congestion is largely due to the traffic being routed to New York and Newport News, or largely so, for the convenience of shipments to Europe. I understood you to say that?

Commissioner HALL. The North Atlantic ports, yes, sir; and especially New York.

Senator KELLOGG. That is something the railroads could not control?

Commissioner HALL. No; as long as the boats only go to New York.

Senator KELLOGG. And that is something that Government operation would not benefit in the least, is it not?

Commissioner HALL. Why, there has already been an arrangement made for the bottoms to go to other ports, and the carriers are getting ready to take the goods there; in fact, they are going.

Senator KELLOGG. Yes; but that could be done without the Government taking over the railroads just as well as with the Government taking over the railroads?

Commissioner HALL. Whether just as well or not, I do not know; but it could be done and is being done.

Senator KELLOGG. That depends on the Government ordering the goods shipped to certain ports that furnish ship transportation for it, does it not?

Commissioner HALL. Yes, if our Government is furnishing it. If the allies are furnishing the bottoms, I do not suppose our Government has much to say about it, except as it arranges with them.

Senator KELLOGG. Well, how does the Government operation of railroads enable the Government to ship goods to south Atlantic ports, when it could not do it before? I do not understand that.

Commissioner HALL. I did not say that it could not do it before, and I have said that the railroads were doing it now.

Senator KELLOGG. To what extent have the priority orders which have been issued by the various departments of the Government interfered with or congested transportation? I notice by the report

of Mr. McChord, a member of the commission, or rather his separate report, that there are several Federal agencies authorized by law to issue orders or directions with respect to transportation, and that they are executing that power. Has that tended to congest traffic?

Commissioner HALL. I think so; yes, sir.

Senator KELLOGG. You mean that priority orders have been given by different departments of the Government which conflict or were unnecessary?

Commissioner HALL. I do not mean any priority orders issued by the transportation priority director, by Judge Lovett; I do not mean that. I mean that in the War Department there are at least five bureaus or boards—I think Gen. Baker said 12 a few days ago—each undertaking to direct the kind of munition or supply that it is interested in, which shall receive preference movement. Then there is the Shipping Board seeking preference movement for what it is interested in; and there is the Navy; and those things frequently conflict. More than that, there is a system in vogue of placing in the hands of a manufacturer who has a contract for furnishing supplies, so-called “envelopes” that can be used to obtain preference, and those have been sometimes quite carelessly used, probably under officers who are looking after particular plants, with the result that the volume of movement under preference direction has grown to be very great.

Now, I do not know it as a fact—if you will pardon hearsay, but it comes from a very good source—I understand that quite recently something like 75 per cent of what was moving on the Pennsylvania Railroad was moving under preference directions of some sort. Is that so, Mr. Patterson?

Mr. PATTERSON. Yes, sir; east of Pittsburgh.

Commissioner HALL. If you get 100 per cent preference, then it can all move right along; but where you have 85 per cent preference to be separated from the remaining 15 per cent, it tends to produce congestion.

Senator KELLOGG. Is it your opinion that many of these priority orders are unnecessary?

Commissioner HALL. They probably did not seem unnecessary to those who issued them. They might seem unnecessary to one who did not issue them, and I did not issue them.

Senator KELLOGG. The President had full power under the act passed by the last Congress to place that all in the control of Judge Lovett, did he not—that last act gave the President authority to direct priority of shipments, did it not?

Commissioner HALL. The act gave the power that is expressed there. To answer your question, I should have to take it and study it and see whether it fully covered the situation. What power it gave is there; that is plain.

Senator KELLOGG. Well, if the President had that power, then he had all the power of the direction of priorities that he has now when he takes over the railroads, had he not?

Commissioner HALL. Without being understood as construing the effect of a statute that is not before me at the time, answering your question generally I would say that if the President has full power of priority direction he could deal with that phase of the subject, which is only one of many.

Senator KELLOGG. Have you a copy of that act?

Commissioner HALL. I have it; yes. It is an amendment to section 1 of the act to regulate commerce.

Senator KELLOGG. It reads as follows [reading]:

That during the continuance of the war in which the United States is now engaged, the President is authorized, if he finds it necessary for the national defense and security, to direct that such traffic or such shipments of commodities, as, in his judgment, may be essential to the national defense and security, shall have preference or priority in transportation by any common carrier by railroad, water, or otherwise, and he may give these directions at and for such times as he may determine, and may modify, change, suspend, or annul them, and for any such purpose he is hereby authorized to issue orders direct or through such person or persons as he may designate, etc.

There seems to be no limitation on that power, does there?

Commissioner HALL. The power is to give preference; it is not to deny transportation to a nonessential, but power to give preference for such shipments of commodities as in his judgment may be essential to the national defense or security. It might be said that there were certain things that were desirable and in his judgment desirable, which were not essential, and which in his judgment he could not say were essential. If you ask me whether that is broad enough to cover everything, there certainly is a difference between what is essential and what is desirable.

Senator KELLOGG. Somebody has always got to decide what is essential.

Commissioner HALL. Yes, sir.

Senator KELLOGG. Is there any reason to believe that the direction of priority is going to be simplified under the Government operation of the railroads over their prior operation?

Commissioner HALL. I think it is going to be immensely simplified.

Senator KELLOGG. In what respect?

Commissioner HALL. I think the Government demands will probably be passed through one channel, through the direction of one man. I hope so. It is plainly a desirable thing. Instead of emanating from all sources, they will come through one recognized channel, coordinated before they come.

Senator POINDEXTER. Why do you think that, Mr. Hall? Why do you think they will come through one man now, whereas before they came through a number of men?

Commissioner HALL. Because it is all an evolution. Any nation, when it pulls itself together to meet an emergency, requires time to organize and adjust itself to new demands and activities. We have had a War Department, we have had a Navy Department, and we have had a Shipping Board, and other activities in organization here—

Senator KELLOGG. And still have them.

Commissioner HALL. Yes; we still have them, but I think it has been impressing itself on those who are thoughtful in these matters, that just as the allies have finally concluded to make their purchases and to direct their movement wholly through one common point of contact, so the demands of the Government for preference and priority should naturally and properly come through one point of contact. I may be an optimist, but I hope that is coming.

Senator KELLOGG. You mean that the Government is learning by experience?

Commissioner HALL. Yes, sir.

Senator KELLOGG. But there was no want of power before to do that thing?

Commissioner HALL. There was no want of the power conferred by that section 1 which we have just referred to, and by the amendment to section 6, I think it is, which has been in effect for some years.

Senator KELLOGG. Then the congestion was due to the fact that the President allowed various departments of the Government to make priority orders, rather than from want of power.

Commissioner HALL. Well, Senator, I am not disposed to criticize anyone for what has been done. I am simply saying that I think it will develop as a result of experience that it is desirable that the various demands for preference in movement of military supplies, whether for the War Department, the Navy, or other, shall pass through some one board or individual, so that those demands shall not conflict, and the carrier not be exposed to a demand from A for something, and from B for something, where the two cross each other.

Senator KELLOGG. What I was trying to get at is that had experience shown last July that these priority orders were delaying transportation and congesting traffic, the President could have remedied it by having one man review those orders.

Commissioner HALL. You may draw your own inference, Senator, as well as I can, as to what the President could have done.

Senator POINDEXTER. What we are interested in is more what is going to happen in the future than what has happened in the past. You hope that it will be centralized, and I hope it will be centralized, but what reason have you for thinking that it is going to be centralized. These same agencies of the Government continue now as they did before.

Commissioner HALL. The signs of the times.

Senator POINDEXTER. The moving star, do you mean?

Commissioner HALL. Not exactly; I do not go so far as that. The signs of the times here on earth, I mean. Some effort has been made, at least so I understand, by the executive committee of the carriers to bring that about. I understand that Judge Lovett has been urging it; that it has been taken up with Mr. Garfield and other people, and has been a matter of discussion for the last two or three weeks. It has been taken up also with the War Department and the Navy Department. While I am not in a position, because I was not present at the conversation, to tell you what the prospect is, yet I wish to give the impression that such centralization is probable. That can be readily ascertained from those who are better informed than I—Judge Lovett, for instance.

Senator KELLOGG. I presume they have taken such steps, and they have full power to do it, but what I do not understand is how taking over the railroads and operating them by the Government is going to lessen the confusion in issuing orders when the power existed before. But, one or two other questions. You stated, as I understood you, that you thought there was equipment enough in existence to handle the traffic in the United States?

Commissioner HALL. I said that I thought there might be enough; that is to say, it might be found, when operated as one plant, that it

was enough. It might be found that it was not. Of course, you know, Senator, that I am not an operating man. It is only the impression of an on-looker.

Senator KELLOGG. I understand. Now, have not the railroads during the last six months operated the roads practically as one plant as far as equipment is concerned?

Commissioner HALL. I should not say so; no, sir. Until these recent orders there have been no locomotives that I know of taken off of home lines and loaned to other lines. There may be isolated instances, but not generally.

Senator KELLOGG. Has that been by reason of the interstate commerce law or the antitrust law?

Commissioner HALL. No, sir; from immemorial usage, I guess. The power is kept on the home line, just as passenger cars are ordinarily.

Senator KELLOGG. What has been done by the railroads toward unifying their operation?

Commissioner HALL. Well, that would be a long story and a very detailed story. There are representatives of carriers here present who can give it to you in that detail. I would have to go back to the records to give it to you.

Senator KELLOGG. Have you any reason to believe from your experience or your knowledge of the operations of Government departments, that the Government can operate the railroads more economically and efficiently than a private enterprise?

Commissioner HALL. In normal times; no, sir.

Senator KELLOGG. If the Government can not do it in normal times, how can it do it in war times more efficiently and economically?

Commissioner HALL. Your question was more efficiently and economically?

Senator KELLOGG. Yes.

Commissioner HALL. It seems to me that if you look at the railway plant in this country as an instrumentality for defense, it can be used more efficiently if handled under one immediate direction, the Commander in Chief of the Army and Navy. Whether it is more economically done or not will depend very largely on the operating men who conduct that operation for the Government. I can see, I think, how very important economies could be realized. Of course a freight car does not earn a cent for the road that is using it as long as it is standing idle. The more constantly a car moves under load the greater the revenue return per car, and just to that extent do the revenues of the carrier increase. I think by the operation of the plant as a whole, along the lines of some of the things I have indicated in response to the last question here, there might result economy of operation which could not be had under competitive conditions.

Senator KELLOGG. That is you believe that economies in operation and efficiency in operation can be accomplished by practically consolidating all of the railroads in the United States?

Commissioner HALL. Yes, sir; for operation at the present time.

Senator KELLOGG. Which heretofore the law has prohibited the railroads from doing.

Commissioner HALL. Yes, sir.

Senator KELLOGG. Why could not that be accomplished by simply authorizing by act of Congress the railroads under the direction of the Government to operate as a unit?

Commissioner HALL. That was suggested as the first alternative in the special report to Congress.

Senator KELLOGG. And you believe that to be the best?

Commissioner HALL. No, sir; I did not say that. It was one of two alternatives. Considering the fact that the United States is at war it may be that the second is best, but that has gone out from the range of conjecture. The President has decided that.

Senator KELLOGG. Has your knowledge and experience with the departments of the Government led you to believe that they are very efficient? I do not make that as a criticism, but in the very nature of things, as compared with private enterprise?

Commissioner HALL. I should say, generally speaking, no, sir.

Senator KELLOGG. And you have no reason to believe that it will be more efficient in railroad operation than in other operations.

Commissioner HALL. I think under the present circumstances; yes.

Senator KELLOGG. Why, because of the railroad organization?

Commissioner HALL. The railroad organizations are there; the skilled operating men are there. The traffic men will not be so much needed, because there will not be competition in traffic, but the skilled operators are there with their experience and ability and knowledge placed at the disposal of the President and his Director General, relieved from restraints that have naturally gone with the endeavor to preserve the competitive feature. It seems to me that they will be quick to devise and energetic to put into effect a great many methods for increasing the output of that plant.

Senator KELLOGG. That is by reason of the enterprise of the private operators?

Commissioner HALL. It is by reason of all things put together, including the opportunity, which they otherwise would not have, to disregard the earnings of this one hundred miles as against another one hundred miles.

Senator KELLOGG. That is an argument in favor of the unification of the railroads at any time, either peace times or war times?

Commissioner HALL. That is a matter of judgment. I am not advancing it except with respect to conditions that now obtain.

Senator KELLOGG. Now, as a matter of fact, from 1907 to 1916, the railroads had more equipment than they could use, had they not?

Commissioner HALL. Most of the time, and in most places.

Senator KELLOGG. And since the war began, it has been impossible for them to acquire a large amount of additional equipment, has it not?

Commissioner HALL. Yes, sir, if you eliminate what they have been required to replace, to fill in and use. It has not been because the engines were not being made, but because our Government for the very highest reasons felt that the new locomotives should go to supply the foreign needs.

Senator KELLOGG. I am not criticising the policy. Undoubtedly it was necessary, but as a matter of fact the locomotives and cars were taken and sent to Russia and France.

Commissioner HALL. Quite probably.

Senator KELLOGG. And therefore the railroads could not acquire equipment even if they had the money.

Commissioner HALL. Several hundred of them so ordered were readjusted to our standard gauge and put in use within the last few weeks.

Senator KELLOGG. I understand that, but I am speaking of during the last six months.

Commissioner HALL. I am speaking of the same period.

Senator KELLOGG. That is, when Russia went to pieces, we stopped shipping engines over there and took them for our own use.

Now, do you know whether the want of capital by the railroads has in any way hampered the obtaining of equipment in the last six months, or is it because they could not get it?

Commissioner HALL. I do not think that the lack of capital would have hindered the strong road from getting additional locomotives and cars so much as the builder's lack of material and lack of labor and the precedence given to foreign orders and the fact that because of delays in deliveries they could not count on them.

Senator KELLOGG. That is something they could not control?

Commissioner HALL. But which the Government might be able to control, by the way, because in the matter of steel, whether it is needed most for rails or needed most for war operations abroad, is to be determined by the Government, and not by the individual owning the mill.

Senator KELLOGG. I take it from your answer that you think it would be very unfair for the Government to make these advances a lien on the railroad properties in priority to the securities now issued?

Commissioner HALL. It had not occurred to me that there was any occasion for doing that.

Senator KELLOGG. It could not be done legally, anyhow, could it?

Commissioner HALL. I should doubt that very much. It had not occurred to my mind as a thing that was within the sphere of contemplated action.

Senator KELLOGG. Mr. Chairman. I do not think I care to ask any further questions.

The ACTING CHAIRMAN. The hour of 1 o'clock has arrived, and as there is a probability that the examination of the commissioners will be protracted, it may be as well to adjourn at this time.

Senator WATSON. Mr. Chairman, I move that the committee adjourn until 10 o'clock Monday morning, and that these gentlemen be requested, if at all possible, to return.

(The motion was agreed to, and accordingly at 1 o'clock p. m., the committee adjourned until Monday, December 31, 1917, at 10 o'clock a. m.)

GOVERNMENT CONTROL AND OPERATION OF RAILWAYS.

MONDAY, DECEMBER 31, 1917.

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE COMMERCE,
Washington, D. C.

The committee met at 10 o'clock a. m., pursuant to adjournment, at room 326, Senate Office Building, Senator Smith of South Carolina acting chairman, presiding.

Present: Senators Pomerene, Myers, Thompson, Cummins, Townsend, Le Follette, Poindexter, Watson, and Kellogg.

STATEMENT OF HON. H. C. HALL, CHAIRMAN INTERSTATE COMMERCE COMMISSION—Resumed.

Commissioner HALL. Mr. Chairman, before the committee met this morning there was inquiry as to the amount already expended in valuation work. That, up to the end of the fiscal year ended June 30, 1917, was approximately \$8,950,000.

Senator TOWNSEND. Expended for what?

The ACTING CHAIRMAN. Under the La Follette Act. Some one asked the question this morning as to how much it had cost us for the physical valuation of railroads.

Commissioner HALL. Up to June 30, 1917, about \$8,950,000. It is estimated that since then—that is, is the six months since then—there has been expended approximately a million and a half.

Senator CUMMINS. Mr. Hall, I take up now the tables which were furnished to the committee by the commission in response to the request of the committee. I read the first request:

Table showing the gross and net operating income of all operating railways, taking each separately for the years 1912, 1913, 1914, 1915, 1916 and 1917.

I also read a modification which the commission felt compelled to add to that item:

That aggregates for all Class 1 roads be given for each of the years 1912 to 1917, and that the details by roads be given for the latest annual report; that is. December 31, 1916.

Referring to the table itself I find one column with the heading "Railway operating revenues." Will you please state what the operating revenues of the railways are according to the terminology used by the commission?

Commissioner HALL. Senator, the railway operating revenues under the terminology used, prescribed for railway accounting by the commission under section 20 of the act, and followed in the annual and monthly reports of the carriers to the commission, means the freight, passenger, and other revenue from transportation service rendered, with such incidental receipts as are grouped under that heading.

Senator POMERENE. May I ask in connection with what matter it is that you are now answering?

Senator CUMMINS. Senator, I am taking up the examination of Mr. Hall upon the tables which have been furnished to the committee.

Commissioner HALL. The accounts which go under that heading, "Railway operating revenues," are to be found on page 302 of the prescribed form of the annual report to the commission under the

heading "310. Railway operating revenues." Shall I read that into the record?

Senator CUMMINS. I would like to have it go in, but I will not ask you to read the description of the operating revenues. I ask that there be put in in connection with Mr. Hall's answer, the items making up the operating revenues found on page 302, of a blank which the railway companies are required to use in their annual report, the table being 310.

(The table referred to is here printed in full as follows:)

310. RAILWAY OPERATING REVENUES.

State the railway operating revenues of the respondent for the year (classified in accordance with the Uniform System of Accounts for Steam Railway Corporations), and the comparison of such revenues with those of the preceding year (showing increases in black and decreases in red) for each of the several classes. The proportion of joint traffic receipts belonging to other carriers should not be included in columns (b) and (c).

Line No.	Class of railway operating revenues.			Class of railway operating revenues.		
	(a)	(b)	(c)	(d)	(e)	(f)
1	(101) Freight.....			(131) Dining and buffet.....		
2	(102) Passenger.....			(132) Hotel and restaurant.....		
3	(103) Excess baggage.....			(133) Station, train, and boat privileges.....		
4	(104) Sleeping car.....			(134) Parcel room.....		
5	(105) Parlor and chair car.....			(135) Storage—freight.....		
6	(106) Mail.....			(136) Storage—baggage.....		
7	(107) Express.....			(137) Demurrage.....		
8	(108) Other passenger train.....			(138) Telegraph and telephone.....		
9	(109) Milk.....			(139) Grain elevator.....		
10	(110) Switching.....			(140) Stockyard.....		
11	(111) Special service train.....			(141) Power.....		
12	(112) Other freight train.....			(142) Rents of buildings and other property.....		
13	(113) Water transfers—freight.....			(143) Miscellaneous.....		
14	(114) Water transfers—passengers.....					
15	(115) Water transfers—vehicles and live stock.....					
16	(116) Water transfers—other.....					
17	Total rail-line transportation revenue.....			Total incidental operating revenues.....		
18	(121) Freight.....			(151) Joint facility—Cr.....		
19	(122) Passenger.....			(152) Joint facility—Dr.....		
20	(123) Excess baggage.....					
21	(124) Other passenger service.....			Total joint facility operating revenue.....		
22	(125) Mail.....					
23	(126) Express.....			Total railway operating revenues.....		
24	(127) Special service.....					
25	(128) Other.....					
26	Total water-line transportation revenue.....					

Senator CUMMINS. This column to which I have referred, called "Railway operating revenues," shows the gross or entire operating revenues of all the railroads mentioned during the period to which it is attached?

Commissioner HALL. It shows the gross revenue from railway operations as distinguished from other operations.

Senator CUMMINS. That is to say, the revenues which various railway companies have derived during these years from sources other

than operation—sources other than those items named in the table to which we have already referred, are not included?

Commissioner HALL. Miscellaneous operations, formerly known as outside operations, are not included in that, as I understand it. These are other operating revenues which are not from railway operation.

Senator TOWNSEND. For instance, what?

Commissioner HALL. Well, hotels, for example, where their operation is not an incident of the transportation service. I think the Southern Pacific operates oil fields. There may be pleasure resorts of various kinds in which the railroads are interested, and our prescribed classification will indicate the items that fall under the head of what are now called miscellaneous operations but were formerly called outside operations. The revenues that are not derived from railway operation, or incidental thereto, are not included in the figures that I have just read. There are other sources of revenue such as investments in stocks or bonds. Dr. Lorenz, our chief statistician, can make you a very much better witness on this matter than I can, and I shall be glad to send for him if it is the desire of the committee.

Senator CUMMINS. I think we shall probably need him, but just at this time all I want to have the record show clearly is that the railway companies that are named in the question, have other revenues than those which are put down in this table?

Commissioner HALL. These are railway operating revenues. They have other revenues, some of them.

Senator CUMMINS. The second column in the table, or rather the last column in the table, is headed, or styled, "Railway operating income." Will you describe what those words mean, in the terminology of the commission?

Commissioner HALL. They represent the balance left after deducting railway operating expenses from railway operating revenues.

Senator POMERENE. Does that mean also over and above the interest paid?

Commissioner HALL. Please allow me to correct that answer. The balance remaining after deduction of railway operating revenues from railway operating expenses is known as the net revenue from railway operation. Then there is deducted from that railway tax accruals and uncollectible railway revenues, the last a very insignificant item, and what is there left is railway operating income.

Senator CUMMINS. Let me see if I understand that. From the railway operating revenues which you have described, in order to reach railway operating income, deduct all the cost of operation and maintenance?

Commissioner HALL. Of railway operation, which includes, of course, maintenance, and that includes depreciation.

Senator CUMMINS. You deduct the cost of railway operation and maintenance?

Commissioner HALL. That is included in railway operation.

Senator CUMMINS. And you deduct taxes?

Commissioner HALL. Let me state it again so as to make it plain. I have described railway operating revenues. From that is deducted railway operating expenses, an account which among other things includes maintenance of way and structures and maintenance of equipment, including depreciation, traffic expenses, cost of trans-

portation, and items grouped under the head of miscellaneous, other items grouped under the head of general, and transportation for investment, leaving a balance which is known as net revenue from railway operations. Then from that balance is deducted railway tax accruals, and the very small item of uncollectible railway revenues, leaving what is known in our accounting as railway operating income; the heading at the top of the third column in response to question 1.

Senator POMERENE. May I now renew my question? Do you take into account the money paid out for interest on your bonded or other indebtedness?

Commissioner HALL. Not in that.

Senator CUMMINS. The sum that is left, and which you denominate as railway operating income, is the sum available for the payment of interest and dividends?

Commissioner HALL. Oh, it is larger than that sum, or it may be smaller than that sum according as the miscellaneous operations, which are not included, are other than railway.

Senator CUMMINS. Keeping in mind all the time that we are dealing with operating revenues alone, it is still true, is it not, as I have just said, that what remains after deducting the cost of operation and maintenance, and after charging off depreciation, and taxes, that sum is available for interest and dividends; in other words, there is no other obligation of the railway company to which that remaining sum is to be devoted?

Commissioner HALL. Why, Senator, there remains to be taken care of the balance, whichever way it may be, of the miscellaneous operations which are not strictly railway operation.

Senator CUMMINS. I am not talking of the miscellaneous operation.

Commissioner HALL. But in order to answer your question truthfully, I have to refer to that. This item that is left over of railway operating income is not as yet of itself available to the payment of interest, or available to stockholders for dividends because there is still to be added to it and taken from it the results of other operations, and on top of that the result of investments which are nonoperating, and a variety of other items before you get down to the item of net income. When you finally get down to the item of net income then you reach the stage, as I understand our accounting system, where you have a figure that is available for application to sinking and other reserve funds, to dividends, appropriations for investment in physical property, extinguishment of stock discount and miscellaneous appropriations of income.

I hand you here a blank table which may be identified as that appearing on pages 8 and 9 of the press abstract of Statistics of Railways in the United States for the year ended June 30, 1916, published by the Interstate Commerce Commission, which indicates not only these items but the amount for that year for Class I roads, Class II roads, etc.

Senator CUMMINS. I will take up the first year, 1917, in order to make it clear. The table furnished us shows that the railway operating income of all the Class I roads for the year ending June 30, 1917, was \$1,061,814,427. In order to ascertain now what the net income of those roads was for that year, how much must be added to or taken from that item?

Commissioner HALL. The items which appear on the exhibit just handed you, following the sixth line in the table, reading "Railway operating income" down to the item near the bottom of the second page, net income.

Senator CUMMINS. The table to which you have referred shows these items for the year 1916.

Commissioner HALL. Yes, sir.

Senator CUMMINS. I am trying to find out what items and what amount of them would have to be added or deducted in order to show the net income for 1917. Have you that table as well?

Senator POMERENE. Allow me to suggest for the benefit of those who may read this record afterwards, that those figures be incorporated into the stenographer's transcript, to which the commissioner has referred.

Senator CUMMINS. I was inquiring about one year and he was giving the table applicable to another.

Commissioner HALL. I do not find the item of net income for that year among the tables prepared in response to the questionnaire, nor do I find in the questionnaire itself a request for it. I might add that the figures for 1917 will be made up from monthly reports, and that those monthly reports call for the railway operating items but do not call for these outside and other operations, so that the figures for 1917 can not be made up except on the basis of the annual report which need not be returned for several months after the first of January.

Senator CUMMINS. What I would like to have the record show is the amount of money that the railway companies—that is, the Class I roads that you have tabulated—will have which they can apply if they desire to the payment of interest and dividends.

Commissioner HALL. I can not give you that for 1917, because the commission has not received that information as yet. You have the figures before you for 1916.

Senator CUMMINS. Then, I will get to 1916.

Senator KELLOGG. Senator Cummins, you are talking about calendar years or fiscal years?

Senator CUMMINS. The fiscal years.

Senator KELLOGG. That is what I supposed.

Senator CUMMINS. This table is made up for the fiscal year and not for the calendar year.

Commissioner HALL. Our fiscal years have been ending June 30. They now end December 31.

Senator CUMMINS. But this table specifically states that it is for the fiscal year—that is, the year ending June 30, 1917?

Commissioner HALL. Yes, sir.

Senator CUMMINS. Do I understand that the commission has not the record that would show that item, about which I have inquired, for the year ending June 30, 1917?

Commissioner HALL. That is my understanding.

Senator CUMMINS. Do not the monthly reports show those things?

Commissioner HALL. They do not. Here is a form of monthly report, which I may offer as an exhibit. You will observe it does not call for such information.

(The blank form referred to is here printed in full, as follows:)

[For use of the Interstate Commerce Commission only.]

EXAMINATIONS.

N. B.—In col. 3 use check (✓) for "Mem. of error" made; use "No" in other cases.

Date of examination.	Subject.	Mem. of error.	Clerk making examination.
.....	1. Oath.....	.....	.....
.....	2. Mileage.....	.....	.....
.....	3. Returns for prior year.....	.....	.....
.....	4. Returns for current year.....	.....	.....
.....
.....
.....
.....

CORRESPONDENCE.

A. FORWARDED.

N. B.—In col. 2 use check (✓) for "Answer needed"; use "No" in other cases.

Date.	Answer needed.	Subject.
.....
.....
.....
.....
.....

[For use of the reporting company.]

MILEAGE CHANGES.

If the *operated mileage* stated for the month for which this report is made differs from that stated in the report for the last preceding month, a brief explanation of the difference should be entered below, as, newly constructed line, acquisition of line (with name of former operating company), operation discontinued, line abandoned, resurvey, remeasurement, etc.

Cause of change.	Increase over preceding month.	Decrease under preceding month.
.....	<i>Miles.</i>	<i>Miles.</i>
.....
.....
.....
Total.....
REMARKS.		
.....		
.....		
.....		
.....		

H. RECEIVED.

[illegible]

CORRECTIONS.

[illegible]

INSTRUCTIONS.

The revenue, the expense, and the investment items in this monthly report should be taken from and agree with the accounts of the reporting carrier kept in conformity with current classifications prescribed by the Interstate Commerce Commission relative to steam railway accounts. The account numbers in the "Item" column refer to the accounts in the classifications. This monthly statement should cover the operations of the reporting carrier from the beginning of business on the first day of the month or period named. Until further ordered, the customary rules relative to corrections may be followed. Deficits, losses, and decreases should be shown on the last day of the month or period named. Ratios of increase or decrease should be stated to the nearest tenth of 1 per cent; as, 12.3 per cent. All the information requested on both sides of this form should be a statement to that effect should be made in columns (d) and (i) in explanation of the absence of figure entries. All the information requested on both sides of this form should be furnished by the reporting carrier. Steam railway companies are required to mail their monthly reports of revenues, expenses, income, and investment items herewith called for to the Division of Statistics, Interstate Commerce Commission, Washington, D. C., on or before the last day of the month immediately following the month covered by the report.

Senator CUMMINS. We will pass then to 1916. The table shows—the one that you have furnished shows—the railway operating revenues as \$3,381,597,866, and it shows the railway operating income, \$1,024,381,299. Will you take this table, to which you have referred, for 1916, and state what charges or payments have been deducted from the railway operating income in order to reach the net income?

Commissioner HALL. Do you wish me to read this list and the amounts?

Senator CUMMINS. I would like to have those items identified in some way. I want to say to you, Mr. Hall, that if there is any other member of the commission, or any officer of the commission, who can answer these questions more readily, I would be very glad to propound them to him. I simply want to find out what money the railroad companies have had in the last three or four years, or five years, after paying their expenses.

Commissioner HALL. Yes, sir. Dr. Lorenz has been sent for and he will be here very shortly, and he can give it to you much better than I. Any answer to your question involves reading off a good many of these items with figures against them, but as Dr. Lorenz is the statistician and it is in his province more than mine, I think you will get more satisfactory responses from him. He will be here very shortly. I am, however, perfectly willing to read these in, if you so desire.

Senator LA FOLLETTE. Suppose you let him read them in. They will then be in the record.

Senator KELLOGG. Is it necessary to put in all these items? Why can he not give the details?

Senator CUMMINS. It gives us a better comprehension of the character of the expenses that are charged against and taken from the railway operating income.

Senator KELLOGG. I only suggested that as you have the totals in the Table No. 1. However, I have no objection.

Commissioner HALL. Taking the year ended June 30, 1916, the railway operating revenues amount to \$3,472,641,941. From that is deducted the railway operating expenses that amount to \$2,277,202,278, leaving a net revenue from railway operations of \$1,195,439,663. From that again—

Senator POINDEXTER. What year is that for?

Commissioner HALL. The year ended June 30, 1916. We have not the figures in full for the year ended June 30, 1917. From that are deducted two accounts, railway tax accruals, \$150,014,541, and uncollectible railway revenues, \$822,532, leaving the railway operating income \$1,044,602,590.

The ACTING CHAIRMAN. You have it in this table as \$1,024,000,000.

Commissioner HALL. I am reading now from the press abstract of Statistics of Steam Railways in the United States for the year ended June 30, 1916.

Senator CUMMINS. The figures do not quite correspond with this table.

Commissioner HALL. I see it is here, "\$1,024,000,000." The statistician, when he arrives, will be able to explain that, no doubt, but here in this abstract it appears \$1,044,602,590. We next take into account revenues from miscellaneous operations, amounting to \$38,527,600.

and deduct the expenses of miscellaneous operations therefrom in an amount of \$33,008,368, leaving a net revenue from miscellaneous operations of \$5,519,232. The taxes on miscellaneous operating property is next deducted from that last figure, these taxes amounting to \$2,079,265, leaving a balance from these miscellaneous operations known as "Miscellaneous operating income," \$3,439,967, to be added to the railway operating income, and, putting those two together, the total operating income becomes, according to this abstract, \$1,048,042,557.

Next, taking up the nonoperating income, consisting of various accounts: The first is hire of freight cars—credit balance, \$16,724,136; then rent from locomotives, \$6,621,239; rent from passenger-train cars, \$10,633,029; rent from floating equipment, \$205,347; rent from work equipment, \$1,776,509; joint facility rent income, \$25,831,102; income from lease of road, \$5,738,079; miscellaneous rent income, \$8,460,761; miscellaneous nonoperating physical property, \$2,899,118; separately operated properties—profit, \$3,403,651; dividend income, \$95,320,640; income from funded securities, \$44,601,475; income from unfunded securities and accounts, \$25,323,829; income from sinking and other reserve funds, \$2,737,243; release of premiums on funded debt, \$397,885; contributions from other companies, \$864,568; and the item known as miscellaneous income, \$2,270,331.

These accounts that I have read under the heading of "Nonoperating income," giving a total nonoperating income of \$253,808,942, which, added to the total operating income, gives a gross income of \$1,301,851,499.

Then follow "Deductions from gross income." The first is hire of freight cars—debit balance, \$41,240,971; rent for locomotives, \$6,357,073; rent for passenger-train cars, \$11,603,074; rent for floating equipment, \$2,181,076; rent for work equipment, \$505,148; joint facility rents, \$41,571,819; rent for leased roads, \$139,786,572; miscellaneous rents, \$5,439,990; miscellaneous tax accruals, \$2,442,491; separately operated properties—loss, \$2,555,084; interest on funded debt, \$415,036,887; interest on unfunded debt, \$17,892,708; amortization of discount on funded debt, \$3,225,542; maintenance of investment organization, \$365,732; income transferred to other companies, \$3,925,685; miscellaneous income charges, \$3,707,752; making total deductions from gross income \$697,837,604.

That item deducted from the "Gross income" leaves the "Net income," about which we have been speaking, and that "Net income" for the year ended June 30, 1916, was \$604,013,895. Then follows the disposition made of that net income.

Senator CUMMINS. I will inquire about that a little later, but in reaching the net income, which you have just stated, there has been deducted the interest upon the entire funded debt, or bonded debt, of all the railways.

Commissioner HALL. On the unfunded also.

Senator CUMMINS. Yes, both funded and unfunded. So that for the year 1916, ending June 30, all the railways in Class I had something over \$600,000,000 that could have been applied if they had been so minded, to the payment of dividends on stock?

Commissioner HALL. That was what was left after the payment of these debts; yes. But there were sinking and other reserve funds which had to be taken care of out of this item "Net income."

Senator CUMMINS. Precisely; the railroads could have put any amount they saw fit into the sinking fund or into the surplus fund, but they had that money after paying all their expenses and all their interest for the year 1916.

Commissioner HALL. Yes; after paying their current debts.

Senator CUMMINS. And just from a mere recollection of the par value of all the capital stock outstanding at that time, that would have paid a substantial 10 per cent dividend upon all the capital stock at par, would it not?

Commissioner HALL. The capital stock outstanding in the hands of the public, eliminating duplication, issued by Classes I, II, and III roads, and nonoperating subsidiaries for the year ended June 30, 1916, appears in answer to question 8 of the Questionnaire as \$6,314,570,-354. The account "Net income" for that year, as appearing in the abstract in evidence, is \$604,013,895 for Classes I, II, and III, which would be something less than 10 per cent on the capitalization outstanding in the hands of the public.

Senator CUMMINS. Ten per cent would be about \$630,000,000?

Commissioner HALL. Yes.

Senator CUMMINS. Whereas the actual net income that could have been applied to dividends was \$604,000,000.

Commissioner HALL. I think it ought to be stated here that the credit table from which you have been reading these items include both Class I and Class II roads, whereas the table furnished by us included only Class I roads, and possibly that will account for the discrepancy in the figures.

Senator CUMMINS. The abstract from which I take the item of net income for the year ending June 30, 1916, includes Class I, Class II, and Class III roads. The response to item 8 of the Questionnaire is confined to Class I and Class II roads, and nonoperating subsidiaries.

Commissioner HALL. Yes.

Senator CUMMINS. There is a little confusion there still. You refer to question 8. Item 1 in the Questionnaire, as answered in the table to which I have referred more than once, is confined to Class I roads.

Commissioner HALL. It is.

Senator CUMMINS. And that fact will account in all probability for the discrepancy or difference in the figures that appear in the printed table as compared with the figures in the answer to the Questionnaire.

Commissioner HALL. That may be, but Dr. Lorenz can indicate that definitely.

Senator KELLOGG. Right there, that total amount that you gave of net income after paying interest, did you say the whole amount of that was available for dividends?

Commissioner HALL. That was the question. I indicated in my answer that out of that would come whatever was applied to sinking and other reserve funds, whatever was appropriated for investment in physical property, stock discount extinguished through income, and miscellaneous appropriations of income.

Senator POINDEXTER. Let me ask you whether or not investment in physical property includes all operating expenses in the figures which you gave?

Commissioner HALL. Not as investment; no.

Senator CUMMINS. I want the commissioner to clearly understand my former question. I have not suggested, of course, that all this money was divided among the stockholders; the company was at liberty, of course, to use part of it for surplus and part for sinking fund, and part of it for investment, as they saw fit, but it was free money after paying all the expenses of the railroads, and after the maintenance of their property, and after proper charges for depreciation were made.

Senator TOWNSEND. Is that correct?

Commissioner HALL. It was free money except as engagements might have been entered into with regard to sinking and other reserve funds.

Senator CUMMINS. I now refer to the year ending June 30, 1915, as noted in the answer to the question; I read what is there stated—remember all the time that these are figures for Class I roads alone; "Railway operating revenues, \$2,871,563,047; railway operating income, \$716,476,186."

I would like the very same application of the report of the commission and the same separation made with regard to the two items I have just read as you have already made with regard to the year 1916, and I may say that I would like the same explanation and the same figures for each of the years mentioned in answer to the question.

Commissioner HALL. Well, Senator, I have the corresponding column of the abstract for the year ending June 30, 1915.

Senator CUMMINS. To avoid the necessity of reading all these items, will you please identify the pages and hand them to the reporter, so that they may become a part of the record, and will you state from those reports which you have identified the final result for each of those years as you have stated that result for the year 1916?

Commissioner HALL. For the year 1916 I have stated the item "Net income," but I have not stated what disposition was made of that net income. That appears also in the abstract from which I have been reading.

Senator CUMMINS. I think in order to be clear and to be less confusing I would rather have those other years follow as I have suggested, and then we will take up the inquiry as to what was done with the money.

Commissioner HALL. The corresponding information for the year ending June 30, 1915, appears in the press abstract of Statistics of Steam Railways in the United States for the year ending June 30, 1915, published by the Interstate Commerce Commission, under the head "Operating roads," and a subcolumn "Total operating roads under income account," on pages 8 and 9 of that abstract.

(The data referred to are here printed in full, as follows:)

The tables following present for the year ended June 30, 1915, the condensed income account and the profit and loss account of the operating roads and of their subsidiary nonoperating roads. The figures given include such intercorporate payments as may be involved in the items stated. Returns for a few small roads have been omitted because of incompleteness. The accounts of the operating roads include both operating and financial transactions, while the accounts of the nonoperating roads are confined for the most part to receipts and payments under leases, contracts, and agreements. For a number of items, such as dividends, taxes, etc., figures for all roads must be taken into consideration in order to learn the aggregates of such items for the classes of railway companies represented.

Income account.

Item.	Operating roads.			Nonoperating roads.		
	Class I roads.	Class II roads.	Class III roads.	Total operating roads.	Subsidiary to Class I roads.	Subsidiary to Class II roads.
OPERATING INCOME.						
Railway operating revenues.....	\$2,871,583,047	\$89,912,086	\$14,718,089	\$2,956,193,202		
Railway operating expenses.....	2,021,160,614	54,420,217	13,102,135	2,088,682,966		
Net revenue from railway operations.....	850,402,433	15,491,849	1,615,954	867,510,246		
Railway tax accruals.....	133,276,330	3,803,604	695,325	137,775,259	\$1,509,685	\$1,129
Uncollectible railway revenues.....	649,917	12,208	3,853	665,978	\$12,094	\$1,522,008
Railway operating income.....	716,476,186	11,676,037	916,786	729,069,000		
Revenues from miscellaneous operations.....	38,368,740	125,057	34,089	38,527,886		
Expenses of miscellaneous operations.....	33,526,736	125,253	26,418	33,678,407		
Net revenue from miscellaneous operations.....	4,841,944	198	7,671	4,849,819		
Taxes on miscellaneous operating property.....	1,922,404	17,164	653	1,940,221		
Miscellaneous operating income.....	2,919,540	17,860	7,018	2,900,198		
Total operating income.....	719,395,726	11,658,677	923,804	731,978,207		
NONOPERATING INCOME.						
Hire of freight cars—Credit balance.....	10,832,846	1,899,612	130,201	12,862,659		30
Rent from locomotives.....	6,625,802	260,405	49,787	6,935,794	7,348	8,420
Rent from passenger-train cars.....	10,668,834	101,374	12,270	10,782,478	9,383	10,382
Rent from floating equipment.....	153,407	4,450		157,857		
Rent from work equipment.....	2,068,617	23,962	5,090	2,097,669	913	913
Joint facility rent income.....	23,381,727	1,128,334	171,238	24,681,299	213,924	213,924
Income from lease of road.....	6,043,417	527,363	20,175	6,590,955	112,507,968	113,048,813
Miscellaneous rent income.....	7,720,039	442,442	16,735	8,179,816	415,466	572,782

Miscellaneous nonoperating physical property.....	2,555,149	17,753	7,063	2,053,554	148,284	990	149,293
Separately operated properties—Profit.....	87,779,467	180,621	5,170	1,707,967	488,507	.....	488,507
Dividend income.....	177,405	180,621	4,770	1,707,967	488,507	.....	488,507
Income from funded securities.....	20,436,468	438,171	57,765	28,421,360	2,182,803	2,716	2,182,819
Income from unfunded securities and accounts.....	28,528,468	438,171	57,765	28,421,360	2,182,803	.....	2,182,819
Income from sinking and other reserve funds.....	2,433,944	48,248	2,594	2,704,186	38,594	.....	38,594
Release of premiums on funded debt.....	8,571,611	43,759	.....	101,370	.....	.....	87,531
Contributions from other companies.....	3,551,807	826,607	198,573	4,376,560	.....	.....	.....
Miscellaneous income.....	2,996,783	73,415	11,672	3,061,850	62,746	113	62,870
Total nonoperating income.....	236,984,460	6,127,454	737,023	243,848,946	117,277,109	423,843	117,821,352
Gross income.....	956,890,195	17,786,131	1,660,827	975,827,153	115,767,484	411,749	116,296,474
DEDUCTIONS FROM GROSS INCOME.							
Hire of freight cars—Debit balance.....	30,756,393	2,503,424	590,502	33,850,280	677,491	.....	684,539
Rent for locomotives.....	6,197,003	520,756	157,488	6,875,247	172,334	7,068	173,190
Rent for passenger-train cars.....	11,341,074	337,793	57,058	11,735,925	288,564	756	289,320
Rent for heating equipment.....	11,698,448	12,797	3,482	11,714,917	.....	.....	.....
Rent for work equipment.....	426,101	31,260	5,006	461,466	2,347	.....	2,347
Joint facility rents.....	37,024,137	963,963	94,810	38,612,810	685,565	498	686,063
Rent for leased roads.....	122,028,657	500,120	218,680	123,247,457	855,251	.....	855,251
Miscellaneous rents.....	5,128,262	168,636	70,218	5,667,136	309,939	66	310,055
Miscellaneous tax accruals.....	2,001,198	23,601	8,450	2,033,249	298,261	130	298,391
Separately operated properties—Loss.....	3,041,407	.....	14,639	3,056,046	.....	.....	.....
Interest on funded debt.....	387,029,566	14,405,155	2,488,526	403,923,247	58,836,725	711,896	59,617,419
Interest on unfunded debt.....	27,509,866	2,443,618	1,099,511	31,022,495	3,413,524	53,009	3,508,803
Amortization of discount on funded debt.....	2,919,305	241,751	66,089	3,226,145	161,065	.....	175,375
Maintenance of investment organization.....	277,531	6,000	.....	283,531	364,365	7,063	372,977
Income transferred to other companies.....	635,962	296,922	13,358	886,242	2,206,749	.....	2,206,749
Miscellaneous income charges.....	1,810,127	32,165	9,762	1,852,054	719,748	65	719,813
Total deductions from gross income.....	640,224,117	22,357,890	4,806,579	667,448,536	68,982,558	797,087	69,890,312
Net income.....	316,156,078	4,571,769	3,806,762	308,378,557	46,784,926	366,358	46,406,162
DISPOSITION OF NET INCOME.							
Income applied to sinking and other reserve funds.....	10,730,948	318,931	69,077	11,118,856	1,085,222	.....	1,095,222
Dividend appropriations of income.....	168,344,467	1,479,575	183,674	170,007,716	39,428,113	18,000	39,512,704
Income appropriated for investment in physical property.....	20,812,332	311,868	47,898	21,172,680	1,178,272	.....	1,178,272
Stock discount extinguished through income.....	.....	10,358	12,250	22,608	.....	.....	.....
Miscellaneous appropriations of income.....	3,664,457	1,044	11,960	3,667,491	56,707	.....	56,707
Total appropriations of income.....	203,572,124	2,121,796	325,431	206,019,361	41,698,314	18,000	41,842,905
Income balance transferred to profit and loss.....	112,583,944	6,693,656	3,551,183	102,359,206	5,086,612	511,993	4,565,257

STATEMENT No. 38.—Comparative income and profit-and-loss statements of the railways, considered as a system, for the years ended June 30, 1914 and 1913.¹

Item.	1914			1913		
	Amount.	Average amount per mile operated.	Ratio to total operating revenues.	Amount.	Average amount per mile operated.	Ratio to total operating revenues.
			Per cent.			Per cent.
Average operated mileage represented (miles).....	245, 024. 55			242, 657. 12		
Rail operations—revenues.....	\$3, 047, 019, 908	\$12, 405	100. 00	\$3, 125, 135, 798	\$12, 879	100. 00
Rail operations—expenses.....	2, 200, 313, 159	8, 958	72. 21	2, 169, 968, 924	8, 943	69. 44
Net revenue—rail operations.....						
Auxiliary (or outside) operations—revenues.....	\$846, 706, 749	3, 447	27. 79	\$955, 166, 874	3, 936	30. 56
Auxiliary (or outside) operations—expenses.....	64, 376, 514	262	2. 11	67, 982, 036	280	2. 17
Net revenue—auxiliary operations.....	1, 400, 095	288	2. 16	65, 953, 702	272	2. 11
Net revenue—total.....		6	. 05	2, 028, 334	8	. 06
Net railway operating revenue.....	845, 216, 654	3, 441	27. 74	957, 195, 208	3, 944	30. 62
Railway tax accruals.....	140, 531, 575	572	4. 61	127, 331, 960	524	4. 07
Railway operating income.....	704, 685, 079	2, 869	23. 13	829, 863, 248	3, 420	26. 55
Other income:						
Miscellaneous rent income.....	8, 439, 406	34	. 28	8, 534, 968	35	. 28
Net profit from miscellaneous physical property.....	8, 996, 549	37	. 29	8, 763, 028	36	. 28
Separately operated properties—net profit.....	3, 754, 007	15	. 12	3, 299, 228	14	. 11
Net dividend income.....	27, 744, 998	113	. 91	30, 075, 332	124	. 96
Net income from funded securities.....	9, 691, 655	40	. 32	9, 516, 768	39	. 30
Income from unfunded securities and accounts.....	38, 460, 362	157	1. 26	36, 854, 560	152	1. 18
Release of premiums on sinking and other reserve funds.....	3, 282, 730	13	. 11	3, 205, 104	13	. 10
Miscellaneous income.....	83, 017	(*)	(*)	87, 706	(*)	(*)
Total other income.....	2, 904, 810	12	. 10	3, 165, 630	13	. 10
Total other income.....	103, 338, 034	421	3. 39	103, 502, 204	426	3. 31
Gross income.....	808, 043, 113	3, 290	26. 53	933, 365, 452	3, 846	29. 86

Deductions from gross income:	9,922,081	41	33	9,332,310	38	30
Net deductions for lease of other roads ¹	19,100,706	78	.63	17,438,852	72	.64
Wear and tear on equipment—net debit balance ²	12,913,230	62	.42	12,484,815	51	.40
Joint facility rent deductions ³	5,598,997	23	.19	5,907,297	24	.19
Miscellaneous rent deductions	3,802,545	15	.12	2,083,827	9	.07
Miscellaneous tax accruals	412,443,080	1,679	13.53	404,817,655	1,668	12.95
Net interest deductions for funded debt ⁴	45,930,106	187	1.51	31,191,623	1,129	1.00
Interest deductions for unfunded debt	2,930,905	12	.10	2,579,103	11	.08
Mortgage of discount on funded debt	8,351,887	34	.27	8,456,330	35	.27
Miscellaneous deductions						
Total deductions	521,023,237	2,121	17.10	494,292,112	2,037	15.82
Net income	287,019,876	1,169	9.42	439,073,340	1,809	14.04
Balance in profit and loss on June 30 of preceding year	1,073,000,410	4,368	35.21	1,135,923,530	4,681	36.35
Gross surplus	1,360,020,286	5,537	44.63	1,574,996,870	6,490	50.39
Adjustments, etc., through profit and loss:						
Credits	73,609,306	300	2.42	56,627,809	223	1.81
Debits	104,902,926	427	3.44	44,768,607	184	1.43
Net adjustment	31,695,680	127	1.02	11,854,002	49	.38
Surplus available for appropriation	1,328,726,666	5,410	43.61	1,586,830,872	6,539	50.77
Appropriations for year:						
Appropriations to sinking and other reserves	14,788,266	60	.48	32,763,628	139	1.08
Net dividend appropriations ⁵	339,768,533	1,383	11.15	290,864,853	1,075	8.35
Appropriations for additions and betterments	38,385,936	156	1.26	65,823,035	271	2.10
Appropriations for new lines and extensions	2,120,849	9	.07	579,510	2	.01
Miscellaneous appropriations	3,389,999	14	.11	81,170,808	335	2.60
Stock and debt discount extinguished	12,661,454	52	.42	29,600,139	122	.95
Total appropriations for year	411,133,067	1,674	13.49	471,801,973	1,944	15.09
Balance on June 30 carried to general balance sheet	917,593,599	3,736	30.12	1,115,028,899	4,595	35.68

¹ Excludes returns for so-called small roads (having operating revenues below \$100,000 for the year), switching and terminal companies, and for a few roads the reports of which were not sufficiently complete for use in this statement.

² The figures shown for this item represent the net remaining after intercorporate payments were eliminated.

³ Less than \$1.

⁴ Less than 0.01 per cent.

Commissioner HALL. The net income, ascertained in the same way as for the year ended June 30, 1916, was for the year ended June 30, 1915, for all operating roads, \$308,378,567. The abstracts for the preceding years ended June 30, 1914, 1913, and 1912, I have not here with me but will obtain the information.

Senator CUMMINS. And, Mr. Chairman, when they offer it I want them to be inserted in the record in connection with Mr. Hall's testimony.

(The data referred to are here printed in full as follows:)

STATEMENT NO. 39.—*Comparative income account and profit and loss account of the railways in the United States, considered as a system, for the year ended June 30, 1912.*¹

	Amount.
Average operated mileage represented (miles).....	246, 828. 74
Operating revenues—rail operations.....	\$2, 842, 695, 382
Operating expenses—rail operations.....	1, 972, 415, 776
Salaries and maintenance of organization—nonoperating companies.....	353, 046
Net revenue from rail operations.....	\$869, 926, 560
Outside operations—revenues.....	63, 720, 487
Outside operations—expenses.....	62, 641, 753
Net revenue from outside operations.....	1, 078, 734
Total net revenue.....	871, 005, 294
Taxes accrued.....	120, 091, 534
Operating income.....	750, 913, 760
Other income:	
Miscellaneous rent credits.....	8, 145, 964
Other properties—net income.....	6, 228, 820
Net dividends receivable on stocks owned or controlled ²	26, 029, 924
Net interest receivable on funded debt owned or controlled ²	9, 013, 759
Interest receivable on other securities, loans, and accounts.....	35, 915, 778
Unextinguished premiums on outstanding funded debt.....	51, 818
Miscellaneous income.....	3, 794, 343
Total other income.....	89, 180, 406
Gross income.....	840, 094, 166
Deductions from gross income:	
Net rents accrued for lease of other roads ²	9, 475, 875
Hire of equipment—net debit balance ²	18, 056, 199
Joint facilities—net debit balance ²	12, 025, 500
Miscellaneous rent debits.....	5, 807, 310
Separately operated property—net loss.....	1, 516, 294
Net interest accrued on funded debt ²	395, 893, 442
Other interest.....	25, 404, 605
Extinguishment of discount on securities.....	2, 263, 330

¹ Does not include returns for switching and terminal companies and for a few roads the reports of which were not sufficiently complete for use in this statement.

² The figures shown for this item represent the net remaining after intercorporate payments were eliminated.

STATEMENT NO. 39.—*Comparative income account and profit and loss account of the railroads in the United States, considered as a system, for the year ended June 30, 1912—Continued.*

Deductions from gross income—Continued.

	Amount.
Sinking and redemption funds chargeable to income.....	\$6, 021, 925
Other deductions.....	11, 354, 524
Total deductions from gross income.....	\$487, 819, 004
Net corporate income for year.....	352, 275, 162
Balance in profit and loss on June 30 of preceding year.....	1, 124, 450, 906
Gross surplus.....	1, 476, 726. 068
Adjustments, etc., through profit and loss:	
Credits.....	50, 137, 709
Debits.....	80, 014, 125
Net adjustment.....	¹ 29, 876, 416
Surplus available for appropriation.....	1, 446, 849, 652
Appropriations for year:	
Net dividends declared ²	299, 361, 208
Appropriations for additions and betterments.....	43, 941, 569
Appropriations for new lines and extensions.....	288, 511
Appropriations for other reserves.....	8, 646, 124
Total appropriations for year.....	352, 237, 412
Balance on June 30, carried to general balance sheet.....	1, 094, 612, 240

The ACTING CHAIRMAN. Without objection, that will be done.

Senator CUMMINS. I do not mean the entire report but those pages of the report which refer to this subject.

The ACTING CHAIRMAN. May I suggest that as it has been suggested by Mr. Hall, and also indicated by you what disposition was made of this money, this surplus, in one case, something like \$600,000,000, in order to keep the record perfectly clear, it would be very well to have Mr. Hall do that.

Senator CUMMINS. I am going to ask him about that definitely. Mr. Hall, assuming now that these reports are in so that they can be consulted at any time, will you now state what the railroads did with the \$600,000,000 which represented their net income for the year ending June 30, 1916?

Commissioner HALL. The disposition made was income applied to sinking and other reserve funds, \$12,048,995; dividend appropriations of income, \$185,977,808; income appropriated for investment in physical property, \$51,511,832; stock discount extinguished through income, \$23,223; miscellaneous appropriations of income, \$17,590,716; total appropriations of income, \$267,152,574, leaving an income balance transferred to profit and loss, \$336,861,321.

Senator CUMMINS. Will you kindly put into the record similar information with regard to the years ending June 30, 1915, 1914, and 1913?

¹ Decrease.

The figures shown for this item represent the net remaining after intercorporate payments were eliminated.

Commissioner HALL. I can give you that for the year ended June 30, 1915, but with respect to the other years, I will have to supply it later. The corresponding items for the year ended June 30, 1915, as to the disposition of net income, show—

Senator POINDEXTER. What was the net income for that year?

Commissioner HALL. \$308,378,567, the total of the operating roads.

Senator POINDEXTER. And that for the following year was almost double?

Commissioner HALL. Yes, sir.

Senator CUMMINS. You remember that is after deducting interest on the bonded debt.

Commissioner HALL. The disposition is shown in the abstract as follows: Income applied to sinking and other reserve funds, \$11,118,856; dividend appropriations of income, \$170,007,716; income appropriated for investment in physical property, \$21,172,690; stock discount extinguished through income, \$22,608; miscellaneous appropriations of income, \$3,697,491; making total appropriations of income, \$206,019,361; leaving an income balance transferred to profit and loss of \$102,359,206.

Senator CUMMINS. Now, will you add the same information for the other years embraced in the table?

Commissioner HALL. Senator. I think that will be found in our annual reports. One of my colleagues is going to look it up.

Senator CUMMINS. Passing from the first item to item No. 2 of the questionnaire, you were asked to furnish a table showing the aggregate market value of stocks and bonds of all operating railroads, stating each separately, for each of the above years, and the average of the period, eliminating duplication of stocks and bonds; that is, intercorporate holdings. Your modification with regard to that reads as follows:

It is not possible in less than several months to compile figures which will fully comply with this request. Such data as could be prepared are submitted as affording a basis for an approximation of the desired information. In order to make any response to this query within the time allowed it was necessary to apply the methods described in the attached formulæ. The results produced are therefore little better than rough estimates.

The table is confined to steam roads which were quoted on the New York Stock Exchange in the years indicated as shown by the Financial Chronicle. You selected three years, 1912, 1916, and 1917. The first relates to 1912, and I read the item:

Par value of stocks quoted, \$4,574,587,200; for 1916, the same item, \$4,741,422,100. The same item for 1917, \$4,790,851,200.

Commissioner HALL. That is to December the 14th. We did not have the full year before us.

Senator CUMMINS. Yes. Could you give the committee information with regard to the proportion of the stocks that were quoted on the New York Stock Exchange, and all the stock outstanding.

Commissioner HALL. I could not from any personal knowledge.

Senator CUMMINS. Do you remember about what the outstanding stocks were, eliminating duplication, in 1912?

Commissioner HALL. In the hands of the public, eliminating duplication, Classes I and II roads and nonoperating subsidiaries, par value for the year ended June 30, 1912, of the stocks, appears in response to item 8 of the questionnaire as being \$5,766,093,888.

Senator CUMMINS. And for the year 1916, the same information?
 Commissioner HALL. \$6,314,570,354.

Senator CUMMINS. And up to December 14, 1917?

Commissioner HALL. I do not find that, Senator.

Senator CUMMINS. All the last information you had with regard to the outstanding stock—

Senator KELLOGG. It is the third item.

Senator CUMMINS. It is in a later answer in this exhibit.

Commissioner HALL. I have only an imperfect photograph here. It appears to be \$6,314,570,354.

Senator CUMMINS. The way in which you arrived at the average market value of the stocks quoted on the New York Stock Exchange, as I understand you, is that you have taken the high quotation and the low quotation for the year, and averaged the two.

Commissioner HALL. That was all that could be done in the time limit.

Senator CUMMINS. I understand perfectly well that it is a very long inquiry to get it absolutely, but I want the record to show just how it was done.

Commissioner HALL. It was done in that way, and as note two stars here indicates, this average was assumed to be a mean quotation for the year.

Senator CUMMINS. I am correct in saying the average obtained in that way for the stock actually quoted on the New York Stock Exchange, the average for the first year named, 1912, showed a market value of 110 and 8-100 per cent as compared with par.

Commissioner HALL. For the year 1912?

Senator CUMMINS. Yes.

Commissioner HALL. Yes.

Senator CUMMINS. And for the year 1916 it showed a market value of 94 $\frac{7}{8}$ per cent as compared with par value.

Commissioner HALL. Yes, sir.

Senator CUMMINS. And for the year 1917, the market value of 79 and 3-100 per cent as compared with par value?

Commissioner HALL. Yes, sir.

Senator CUMMINS. Have you any observation with regard to, or could you give us any information with regard to the market value of the stocks which were not quoted on the New York Stock Exchange?

Commissioner HALL. I could not; I have no information.

Senator CUMMINS. Is it your observation that they are more valuable or less valuable stocks?

Commissioner HALL. That is a matter of common knowledge, I should say, that they are of less value.

Senator CUMMINS. That is for a good many stocks that have almost a nominal value, which are not regularly quoted on the stock exchange?

Commissioner HALL. I understand they have never been listed there, many of them.

Senator CUMMINS. And without assuming to get a definite figure, it may be assumed, may it not, that if all the stock outstanding were considered, the market value would be a less proportion of the par

value that is shown here with regard to the stocks that have actually been dealt in on the stock exchange?

Commissioner HALL. When you say outstanding, you refer to outstanding in the hands of the public?

Senator CUMMINS. Yes. Outstanding in the hands of the public.

Commissioner HALL. That would be a matter of appreciation, and I do not feel competent to hazard a conjecture there one way or the other.

Senator CUMMINS. Now I pass over this item so far as the bonds of the railroad companies concerned, and come to item 3.

Senator KELLOGG. May I ask a question about items 1 and 2 before you pass to that?

Senator CUMMINS. Certainly.

Senator KELLOGG. Mr. Commissioner, cannot you make up a statement of item 1 and item 2 so that they will be comparable; in other words, give us the net revenue available for the payment of interest and dividends, with the total amount of outstanding bonds and stocks, so that we can compare it, and then the amount of net revenue available for dividends and the total amount of stock and bonds dividends, so that we can compare it? As it is now, we can not compare item 1 and item 2 with any accuracy. Of course that is as they were called for and it is not your fault.

Commissioner HALL. Senator, you will get a better response to that from the statistician when he arrives, as to just how much it involves. He can answer that better than I could. Doubtless a part of what you seek could be had, but as to how long it will take is another matter. Would you defer that question until he arrives?

Senator KELLOGG. Certainly.

Senator CUMMINS. The information called for in item 3 is:

Table showing aggregate dividends paid by all railways in each of the said years, and average for the period, stating each separately.

Modification by the commission:

Can not be given for 1917. Would suggest that the aggregate only for all Class I roads be given for each year, 1912 to 1916, ending June 30, and the detail by roads for one year. Dividends declared, not actual payments, have been used as the only measure of the effect in the year's income account.

Then follows the aggregate dividends declared by Class I roads from the fiscal year 1912 to 1916, and the calendar year for 1916. The table is perfectly clear, and needs, as I think, no explanation, but in turning to the detail table showing what each road has done in these respects, I find it is confined, as stated, to the year ending December 31, 1916, Class I roads. I think the committee would like to have similar information for all those years, and will the commissioner explain what difficulty there is in making up similar tables for those years?

Commissioner HALL. Senator, responding to an intimation or suggestion from you to a like effect on Saturday, this information is being prepared as to roads having an income of \$10,000,000 or over for the last three years, and the information here sought will be prepared, I understand, as rapidly as possible. It is already in hand.

Senator CUMMINS. What difficulty is there in including all Class I roads?

Commissioner HALL. There is not any difficulty, but you can get results more quickly with those having \$10,000,000 or over. They will represent 90 per cent, in their revenues, of the revenues of the rail carriers in the country. So you would get practically the result of 90 per cent.

Senator CUMMINS. I think your suggestion is a good one. As far as I am concerned, I would like to have the information as quickly as it can conveniently be furnished, and after you furnish those with a revenue or income of \$10,000,000 or more, there would be no trouble in going forward, if time would permit, in getting the same information for all roads of Class I?

Commissioner HALL. There are difficulties, of course. The same property does not remain in the same corporate identity of ownership down through the succeeding years. It involves an unraveling and reasorting, and it will be noticed that even for this year ended June 30, 1916, the same road will appear twice, one representing its operation down to the acquisition of additional property, or the loss of part of its property, and then there must be a subsequent statement for that same road. When you trace that back through the years it involves quite a little analysis.

Commissioner CLARK. Mr. Chairman, may I explain that? With regard to these figures I started and I figured up with Commissioner Meyer, who has direct charge of our statistical work, and with our statistician, Dr. Lorenz, and understanding you wanted the information as early as possible, I suggested to Dr. Lorenz, in response to his suggestion, that he go ahead and make up this information for the roads having operating revenues of \$10,000,000, which would represent 90 per cent of the revenues of the whole and about 90 per cent of the mileage, first, for the three years, and give you that and follow it up with the same information for the two preceding years, which will be 1912 and 1913, and then, if you desire it or indicate any wish for it, go right on and include the same information for the remaining Class I roads which come in between \$1,000,000 and \$10,000,000. That will represent only about 7 per cent of the total.

Senator CUMMINS. As far as I am concerned, that is entirely satisfactory to me, and I think it will give us the information we need.

Commissioner HALL. I am informed that Dr. Lorenz is here now, and can be questioned by the committee, if you desire.

Senator CUMMINS. The fifth item calls for the following information:

Table naming the railway companies which during the said period have averaged a dividend of 4 per cent on stock, also giving the dividend paid each year by each company—

This is the modification by the commission:

We can name the individual companies which declared 4 per cent or more dividends on common stock, showing what the same company paid on preferred, for the year ending December 31, 1916, Class I roads only.

It is merely a question of time, I suppose, in preparing a similar table for other years named in the questionnaire.

Dr. LORENZ. We are now preparing it.

Senator CUMMINS. Then I will pass those. Item 6 calls for this information:

Table naming railway companies which during the said period averaged a dividend of less than 4 per cent on stock, giving the dividend for each year by each company.

The modification is this:

Individual Class I companies which declared less than 4 per cent dividend on common stock or on preferred stock for the year ending December 31, 1916.

The same alteration applies to that table, I suppose?

Dr. LORENZ. Yes, sir.

Senator CUMMINS. Item 7 calls for this information:

Tables showing the investment in road and equipment for each of said years of railway companies, giving each separately.

This is the modification:

Aggregate road and equipment combined can be given for Class I and Class II roads and their subsidiaries for each year 1912 to 1916 (June 30). This is for the entire United States only because of complications arising from leased lines or other subsidiaries.

Does your answer contemplate furnishing the investment account or book value for each of the roads separately, or is it just awaiting the time necessary to complete it?

Dr. LORENZ. We have not undertaken to work that out for each individual company, but we could very readily give the property investment of each operating company owned by that company, and we could give the property investment of its lessor subsidiaries. But the addition of those together would not necessarily give the exact property investment of the entire system. But if that information is desired, by corporate entities, we can give it.

Senator CUMMINS. Personally, I would like to have the information in the most available form possible, and if the commission will furnish those tables in the way suggested by Dr. Lorenz, I would be very much obliged to you.

The eighth item calls for this information:

Tables showing par value of all stocks and bonds for each of said years, stating them separately and eliminating duplications.

The modification is as follows:

This is impossible except for United States as a whole because of duplications.

Does that mean that we can not get for the particular existing railway companies of Class I and Class II the capitalization, eliminating duplication?

Dr. LORENZ. We could give the capital stock and bonds outstanding for which that corporation is responsible, but it operates properties which it does not own directly, but controls through the ownership of stock of the subsidiary and it would be possible to make an analysis of each company, but that would take a great deal of time. We could give, without regard to duplications, the outstanding stock and bonds of each individual corporation, if desired.

Senator CUMMINS. I do not want to impose too much labor on the commission, but I think it would be very necessary, before we have finished with this matter, to know what any plan proposed for com-

pensation will do for the several operating companies, with regard to their stocks and bonds. I would like to have, as far as I am concerned, that information as completely as it can be furnished.

Dr. LORENZ. As I understand it, the thing desired is to show what the operations of the year are, and the yield on the net stocks and bonds of the company that conducts the operations, or of those companies concerned in the operations.

Senator CUMMINS. I do not know what the other members of the committee have in mind, but there was in my mind this inquiry: What will any proposed plan of compensation give to the bond holders and the stockholders of the several railway companies now operating lines of railways?

Dr. LORENZ. May we assume that their relations to their subsidiaries remain unchanged, in the matter, for instance of definite payments of rental or dividends?

Senator CUMMINS. I think we should have to assume that their relation to their subsidiary companies will remain just what it is.

Dr. LORENZ. If we can deal with an operating corporation as a unit, with its existing obligations fixed, it would make it much simpler, and we could give the information better.

Senator CUMMINS. I would like to see a table that would deal with the operating companies, the companies with which the Government must deal in taking over these properties, and giving them compensation upon any plan that may be adopted.

Senator KELLOGG. Have we not got to take things as they are?

Senator CUMMINS. Yes; there can not be any change now. The Government has entered upon the operation of all this property. It must give compensation for its use, and I want to know what effect any given compensation to a particular railway company whose property has been taken over will have upon the securities of that company.

Senator POINDEXTER. Regardless of its application to the question of compensation, just what is it you want, as a fact? I do not quite understand the difference between you and Dr. Lorenz.

Senator CUMMINS. I do not think there is any difference at all.

Senator POINDEXTER. I understood him to say he could give that information, and that would comply with your request.

Dr. LORENZ. The trouble is caused by the use of the expression "eliminating duplications," as stated in the question.

Senator CUMMINS. You understand now what I would like to have? A certain plan is proposed, for the Pennsylvania Railroad, for instance. No matter what the plan is, what will it do for the people who own the road, for the stockholders and the bondholders? You are so much more familiar with it, and so much more competent than I am to determine how that inquiry can be answered, that I leave it to you.

Dr. LORENZ. We will attempt to carry it out in that spirit.

Senator CUMMINS. Mr. Chairman, that is all I care to ask Commissioner Hall. There are certain other inquiries propounded here that I suggested that you may want to question Commissioner Hall about.

Senator POMERENE. Do you desire to interrogate the witness further, Senator Kellogg?

Senator KELLOGG. I do not think so, Mr. Chairman.

Senator WATSON. I would like to ask Commissioner Hall a question or two. We were unable to get a report of your testimony on Saturday, Commissioner Hall, because it is not printed until it is printed as a whole. I want to ask you whether or not, in your judgment—and I am not sure whether you answered this question on Saturday—whether or not the dictator or director general will be able to handle the present freight of the United States without additional equipment or additional terminals? Will he be able to do that, in your judgment?

Commissioner HALL. I certainly did not answer that question on Saturday, Senator. I, of course, can not as yet know what course the director general of railroads is going to pursue. I intimated, I think, my thought that under the operation of the railroads as one plant, with elimination of cross hauling, that utilization of terminals and other facilities by the road that needs them, it might be possible to get along for the present without any very great increase either in cars or in terminals, and that doubtless experience would show where terminals should be improved, or could be improved to advantage, where additional cars and additional motive power were desirable and could be used to advantage, but that it did not seem to be necessary to await not only the expenditure, but the result of the expenditure in the form of additional terminals and additional equipment, before a material betterment could be made in the movement of traffic.

Senator WATSON. In the report made by Mr. Harrison for the railway managers, under date of the 21st of this month, he uses this language:

"Following the adoption of this resolution, 631 railroads, comprising 262,000 miles of lines in the United States, immediately co-ordinated their activities, and for eight months have been operated as a unified continental system."

In your judgment, is or is not that true?

Commissioner HALL. I should not have put it in that way. I do not think it is quite correct.

Senator WATSON. Wherein is it not correct?

Commissioner HALL. I should say, in several ways. If they were one complete system, all the purchasing, I take it, would have been in common. The utilization of given rails would not be made in contemplation of the return from those particular rails. As long as the roads remain in separate ownership and apply their earnings to their own living, it is not to my mind conceivable that they can be utilized as fully as if they were all operated as one plant, and each part used for the benefit of the whole, as distinguished from being for its own benefit.

Senator WATSON. Could or could not these difficulties you describe have been obviated under the management of the railway managers?

Commissioner HALL. Not wholly without legislation that would suspend for the period of the war certain restrictions upon that kind of operation.

Senator WATSON. Precisely. In other words, the one advantage then of having the railroads operated by the dictator, or under the control of the Government, is that it gets away from the effects or the results of the antipooling law; is that not largely true?

Commissioner HALL. Largely so, yes; but there are other benefits also.

Senator WATSON. Let me ask you this hypothetical question: If the railway managers had been able to get away from the results and the effects of the antipooling law, could they not, in your judgment, under this coordination that they obtained through their committee, have run the railroads as successfully, substantially, as one man?

Commissioner HALL. Senator, I think the answer to your question is found in the special report which the Interstate Commerce Commission sent to the Congress. We reached the conclusion, and so reported to the Congress, that unification in operation was indispensable, and that we saw two ways in which that could be done, and only two. One of those was the way to which you just referred. But the individual commissioners have differed as to which was the better way. Personally—and I only speak for myself—I have thought for some time that the simplest way, the most effectual way, the way that solved the most questions and solved them best, was to treat this as an instrumentality of war, and put it in the hands of the Commander in Chief of the Army and Navy, to be used as such. That solved, at one stroke, more difficult problems, or presented the solution of those problems—I do not mean to say that there are no other questions—than the other course.

Senator WATSON. Of course, that is only to be used as a war power.

Commissioner HALL. Surely.

Senator WATSON. During the war.

Commissioner HALL. That is plainly indicated, I think, in our special report.

Senator TOWNSEND. Mr. Commissioner, if during the war, this kind of management is effective, and solves so many problems, why should it be established as an exception during that period; why not make it a general policy?

Commissioner HALL. Now, Senator, if I may answer you frankly, that would be speculating as to the future. We have yet to see what the results of Federal operation will prove to be. We can anticipate what they are likely to be. We can appraise the opportunities for improvement in operation, when the several elements are all put together and treated as one, in unified operation.

Senator TOWNSEND. I assume that you assume it is going to work successfully, or you would not recommend it, that it is going to work better than the present system.

Commissioner HALL. I hope it will.

Senator TOWNSEND. The question I ask is what there is in time of war that would make it more effective than in time of peace, as effective service is a thing all are after, any way. If it is expensive to operate individually, separately, and that is a wasteful method during time of war, why would it not be the same during time of peace?

Commissioner HALL. There are a number of elements entering into it in time of peace which, to my mind, do not enter into the mere matter of operation in time of war. So far as I am concerned, I have not let my thoughts dwell on what I take to be involved in your question, the idea of ultimate Government ownership or operation of railroads.

Senator TOWNSEND. I confess, in asking the question, I have been inherently, probably, opposed to Government ownership, and yet your reasons and the other reasons that are given for turning these properties over to the Government now seem to me quite as good in time of peace as they could be in time of war. War, of course, makes the change imminent, according to your judgment, or necessary. But, as an economic question, I was wondering what the difference is between peace and war.

Commissioner HALL. To my mind, that would be a very different question, and would require study from other angles, from other points of view, and other approach, as to whether that would be or would not be desirable.

Senator WATSON. There are many political problems entering into it, as well as economic problems?

Commissioner HALL. Many problems which do not seem to be involved in the mere taking over of the operation of certain instrumentalities, during the period of war, as a war measure. I do not understand that the President has any such powers in time of peace as he has exercised in the solution of these recent problems.

Senator WATSON. I notice in this report of the railway managers that there was an increase of 20.3 per cent since they took charge, or after they took charge, in the average ton miles handled per month in 1916, and 50 per cent over the monthly average of 1915. Do you know how much they would have been compelled to increase the amount of freight handled, in order to have taken care of it all? How much did they fail to handle? Is there any way in which the Interstate Commerce Commission can get at that?

Commissioner HALL. No; we have not those figures. That information comes to us in the annual reports which are not yet in for the year ending to-day. As to how much they failed to handle, we do not know.

This much is certain, that the carriers have handled a great deal more than ever before in their history.

Senator WATSON. You have no reason to dispute the authenticity of those figures, or their correctness?

Commissioner HALL. No; I simply do not know.

Senator WATSON. There is no way you have at this time to tell how much more they would have been compelled to handle than they were handling, in order to handle the entire traffic required?

Commissioner HALL. I have not those figures; no.

Senator KELLOGG. Mr. Commissioner, the President has adopted your second proposition, to take over the railroads and operate them, as I understand it, as put forth on page 2 of your recommendations, the alternative operation as a unit by the President during the war?

Commissioner HALL. Yes, sir.

Senator KELLOGG. Now, I notice at the close of your report you say—

If the other alternative be adopted and the President operates the railroads as a unit during the period of war, there should be, in our opinion, a suitable guarantee to each carrier of an adequate annual return for the use of the property, as well as of its upkeep and maintenance during the operation, with provision for fair terms on which improvements and betterments made by the President during the period of his operation could be paid for by the carrier upon the return to it of the property after the expiration of that period.

Has the Interstate Commerce Commission considered and formulated any plan or started to formulate a plan for guaranteeing to the carrier compensation for the use of his property while it is taken away?

Commissioner HALL. Not to my knowledge. The commission has not formulated anything with regard to that. I suppose different ideas have appeared to different commissioners as to what can be done, but we understand that the President is to address a special message to the Congress, indicating his views as to that.

Senator KELLOGG. I just wanted to know whether you had been considering any plan which could be submitted to the committee.

Commissioner HALL. We have no such plan formulated.

Senator POMERENE. On May 29, 1917, the President approved the Senate substitute for the Esch Bill, so-called, and that law gave to the Interstate Commerce Commission control over the movement, distribution, exchange, interchange, and return of cars used in transportation of property. I assume that the Interstate Commerce Commission has been exercising that authority?

Commissioner HALL. Yes, sir.

Senator POMERENE. And that bill, although I have not the full text before me, gave to the Interstate Commerce Commission the power to move and distribute these cars, and so forth, under orders to be made by it, either with or without previous notice to the carrier. Have you been exercising that authority?

Commissioner HALL. That bill gave the commission power to make orders after hearings; it gave power to make any emergency directions without hearings. It has not been necessary to make such directions; no order has been made after hearings, and that has been because of our utilizing the existing agencies, and working in cooperation with them as the law contemplates.

Senator POMERENE. I wanted to call your attention specifically to some of the conditions prevailing in my own State. I have been advised in ways that I feel are entirely authentic, that when it came to the movement of coal, for instance, the Chesapeake & Ohio Railroad had its freight tracks and sidings filled with cars loaded with coal, and many cars were at various terminals, like Toledo, Cleveland, Alliance, and elsewhere, which were not moving, and at times when not only the domestic consumers but the industrial consumers as well were suffering because of the lack of a supply of coal, and it seems to me, from information that I have, that if this coal on the tracks had been moved, as it ought to have been moved, it would have very materially relieved this suffering. Am I not correct as to the information I have?

Commissioner HALL. Answering generally, yes. As you stated there has been in that region a very considerable congestion.

Senator POMERENE. Why could not the authority have been exercised by the Interstate Commerce Commission to move these cars, as in a case of emergency, and thus have relieved the situation?

Commissioner HALL. The prime emergency appeared to be to get as much of the lake cargo coal to the Northwest as could be gotten there before the season closed, because of the very great severity of the winter in that part of our country, and the necessity of utilizing water movement as much as possible, so that so long as navigation

was open special stress was laid on getting coal there, and that was done, among other things, through the pooling of coal at the lake ports, and the eliminating of the distinctions in grades, and trade names, and treating coal as coal, to a large degree.

While all energies were bent on getting that supply up there before the Lakes should freeze over, necessarily shipments to other parts of the country nearer to the mines, and that could be more readily supplied from the mines by rail, after the period of lake navigation should close, were to some extent postponed. The handling of the coal, has, as you know, been to a very considerable degree under the direction of Dr. Garfield as the fuel administrator. Until it is otherwise arranged, coal can not move to a consignee, a given plant or industry, unless that plant has made arrangements to buy that coal, or has arranged with some agent to furnish a supply of coal, and if what is already on the cars, on the wheels in movement, is consigned to some other place, the carrier has nothing to do but to take the coal to the place where it is destined, and if it did not happen to be destined to an Ohio point, or any other point where it is needed, the carrier, when it gets its lines open can only take that car to its destination, whatever that may be.

Senator POMERENE. Your explanation in part answers my question, but it does not seem to fully answer it.

As I understand it, the tonnage requirements of the Northwest, by the Lakes, was 26,000,000 tons. In the middle of November it was stated that 23,000,000 tons had been shipped, and that the further requirement was 3,000,000 tons. At this time the terminals in Cleveland and Toledo were more than filled with coal cars consigned to the lakes, and other cars were on the sidings in the State, consigned to the lakes, and these cars were left along the tracks or in the yards and in other places.

In the city of Alliance, which is a manufacturing center, the Drop Forge Co. was obliged to close down its plant, and its daily consumption was about 200 tons. There were 30 or 40 cars of coal consigned to the Lakes in the Alliance yards near this plant. They had remained there for several weeks, the excuse being given that the terminals at Cleveland were filled with cars, and there were no cars for the transportation of coal that was needed by the industrial concerns of the State of Ohio, or for the consumers. Now, could not that situation have been relieved?

Commissioner HALL. As to any particular situation, I could only answer after investigating the facts of that situation. That is what has been done.

Senator POMERENE. Assume the facts to be such as I have stated.

Commissioner HALL. Assuming the facts to be such as you have stated, in regard to this coal consigned to the Lakes, I do not know how it would lie in the power of the railroads to divert it to a plant in Alliance. Nor do I know how it would lie in the power of the Interstate Commerce Commission to take a shipment consigned to you, for instance, and turn it over to any other Senator here.

Senator POMERENE. It may not have been entirely within the power of the Interstate Commerce Commission, but it seems to me that the Interstate Commerce Commission and the Fuel Administrator and the so-called Priorities Board ought to have had some

understanding at which they would have arrived which would have relieved this situation.

Commissioner HALL. Those understandings have been sought and from time to time perfected to an increasing degree, Senator. The difficulties of dealing with a greater coal movement than the country has ever known are very considerable. Not the least among the difficulties is to be found in the fact that many users of coal have neglected to order and purchase coal, and again, when they have made their arrangements, it may happen that the Fuel Administrator directs the mine supplying that plant to turn over its supply to some other plant, with the result that the expected supply is not available. So that this is far from being merely a question of car supply and car movement. They are all found together. The thing that would simplify most would be to divide the country into zones with relation to producing points, and treat coal as coal at those producing points and send it to such destinations within a reasonable distance from the producing point—the mine—as can be supplied with the least haul.

Of course, it is, in such times as these, an absurd thing that coal should be hauled from West Virginia out into Ohio to supply a plant there, when you have coal produced in Ohio, and I could use a thousand illustrations of the same point. What has been done in England is this, to chart its producing and its consuming points and arrange that the shortest economical route from the producing to the consuming point will be used, so that a mine shall not undertake to supply plants outside of its own zone.

Senator POMERENE. Referring again to the Alliance situation, that coal was loaded, as I understand, within a distance of from 50 to 100 miles from the city of Alliance, and those cars could have been moved to the lake and unloaded, and moved back and reloaded several times during the time they were lying on the tracks in Alliance. Certainly that is a situation that ought not to be tolerated. What suggestion have you to make for the relief of that situation?

Commissioner HALL. I would not attempt to make a suggestion as to the relief of that situation without ascertaining the facts in the case, and that is what we have been doing in all these instances.

Senator POMERENE. Take it for granted that the facts were as I have stated. If they were not correct, I would not expect an answer that would apply to such a state of facts. If you assume the facts to be as I have stated, what suggestion have you to make?

Commissioner HALL. Among the assumptions I must make is that this coal is consigned to somebody at the Lakes to go beyond.

Senator POMERENE. Yes.

Commissioner HALL. I do not think that the Interstate Commerce Commission has been given power by the Congress to take that coal and turn it over to somebody else.

Senator POMERENE. I am not confining my thought to what the Interstate Commerce Commission has done or should have done, but what can we do as a legislative body to relieve such a situation, or what could some other body have done, if it is already clothed with authority to relieve the situation?

Commissioner HALL. There must have been some reason for that delay you speak of in these cars moving to the lake. A practicable way to deal with that would be to find out what was the cause for that delay and cure it, and that is what was done at least as

promptly as the matter was brought to the attention of the commission, or the car-service commission, whichever body was approached first.

Senator POMERENE. Let me go to another phase of the matter. The explanation has been offered that there was not motive power sufficient in Ohio to move these loaded cars. What information have you on that subject?

Commissioner HALL. Apparently there was not as much as could be used to advantage, and the western roads are contributing something like 100 locomotives, which they could use on their own lines, to relieve the situation in the C. F. A. territory. To relieve the Boston situation some of the southern roads are supplying to the northeastern roads 25 locomotives, of which 17 have been delivered.

In addition to that, I understand that a number of locomotives which have been manufactured for Russia have been made available for the use of our own railroads, and I have the figures showing the total production during the year 1917, both in cars and locomotives.

Senator POMERENE. That, I think, is covered somewhat by the answers to the interrogatories submitted to the American Railway Association.

Commissioner HALL. I do not recall what that information may be. The information I have is that the locomotives manufactured for domestic use during the year 1917, exclusive of those manufactured in railroad shops, were 2,571, for foreign use 793, and for the United States Government in France, 181, a total of 3,545.

Senator POMERENE. There are several other questions I desire to ask you, in view of the fact that I was not able to be here on Saturday because of the delay of my train. If you have answered them, I will not insist upon your repeating your answers.

I desire to have you discuss for the benefit of the committee the effect of these priority orders upon the general transportation of the country. If you went into that, I do not care to have you go into it again.

Senator KELLOGG. I asked Commissioner Hall a number of questions about priority orders, and he answered them to a certain extent.

Senator POMERENE. If that matter has been discussed, I do not care to go into it again at this time. I will not take the time of the committee to go into it until I have had an opportunity to read what Commissioner Hall has said about it.

Senator KELLOGG. I would like to say a word about the coal situation in the Northwest, so that there will be no misunderstanding in regard to it, and if I am not correct, I will be glad to have the chairman of the commission correct me. My understanding is that coal for northern Wisconsin, northern Minnesota, and North Dakota can not be shipped by rail, and that it must go by boat during the summer, or not at all; that in July the boats were going back empty without coal, owing to the fact that the mines were selling coal at other places, where they could get a higher price for it; that it was going to Canada and was being consigned beyond the power of the railroads to divert it to the Northwest, and it would be a physical impossibility to supply that coal except by water. I think the Fuel Administrator found that some near-by concerns were taking on a large surplus—I do not say all—and he only made that order pooling coal at the lakes in order to expedite its transportation, so long as

it was necessary, and there is still a large shortage in the Northwest, or some considerable shortage. I do not say it is more than the amount named by Senator Pomerene, for all lake ports, including Chicago and others, but in the Northwest in spite of the fact that all of the coal was sent by boat that could be sent.

Commissioner HALL. I think the estimate during the summer, perhaps, was 26,000,000 tons, and that was changed to 29,000,000 tons, and that the estimated amount was not attained, but there were two or three million more tons than would be sent by rail, so that the supply that has gotten to the Northwest is, as I have been told, adequate.

Senator KELLOGG. Of course, the movement by rail does not go beyond Chicago and Iowa points, or possibly some southern Minnesota points, and those have been all shut off.

Senator POMERENE. I do not want you to get the idea that I was opposed to having the Northwest supplied.

Senator KELLOGG. Not at all.

Senator POMERENE. I was simply calling attention to the supply going to our people, and saying that the supply for the Northwest, at the time the statement referred to was made, was within three million tons of being filled, and that in a few days, at most, we should have been getting our supply.

Senator WATSON. What body has charge of, or has assumed to have authority to move cars? Has that been done, or is that done by the Interstate Commerce Commission, or by Dr. Garfield, or by the Priority Board, or by the car service commission?

Commissioner HALL. As a practical matter, the operating department of each railroad has been moving the cars. There have been directions from the car service commission, a subcommittee of the Executive Committee of National Defense of the American Railway Association, and they have given a great many directions in the course of the summer.

Senator WATSON. Has not the Priority Board, under the terms of the law, had full authority to give priority to any kind of freight at any time, to any place?

Commissioner HALL. I was coming to that. The Interstate Commerce Commission, under the powers vested in it by the Esch bill, to which Senator Pomerene has referred, and which was approved, May 29, 1917, has organized a bureau of car service, which is in constant touch, not only with the car service commission, but with the various other bodies having to do with fuel and food administration, and exportation, and the transportation priority director, Judge Lovett.

As I understand it, the fuel and food administrations have no power over the direction of transportation, but they have power to order certain supplies to be set aside for certain purposes. The Fuel Administrator can order that the output of a certain mine be turned over to a certain plant, if he sees fit. That is a very rough illustration.

The transportation priority director has the powers given by the amendments to section 1 of the act, which were referred to on Saturday. He has exercised those powers in five successive priority orders, and certain amendments or modifications of those orders, including, as I recall it, the suspension of one or two of those orders for a day at a

time, to relieve the Ohio situation as to coal. That is my recollection of it; I may not be accurate about that.

The matter of great importance in dealing with these questions of preference and priority is that so far as possible the claims for preference shall not conflict, and to reduce to a minimum the necessity of sorting and resorting the cars that get in the classification yard. The multiplication of preference orders greatly multiplies the labor there, and it is questionable whether the best results would not be obtained by a steady flow, even though it is a slow flow, of traffic in the direction of the points of consumption, impeded as little as may be by directions for priority.

Certainly, when it comes to such a percentage as was indicated on Saturday, when the preference orders amount to 85 per cent, it is manifestly a detriment.

Senator WATSON. Then it is practically all preference?

Commissioner HALL. If it were all preference, it would be all right, because it would all move alike.

Senator WATSON. It would not change the status, however.

Commissioner HALL. But if 100 per cent was moved by preference orders, it would be moving at an equal pace.

Senator CUMMINS. The answer you made to an inquiry propounded by Senator Watson prompts further inquiry relative to the comparative advantage of repealing the anti-pooling law, or the anti-trust law, in reference to the matter of Governmental operation. If we repeal the antipooling law, all that that would accomplish would be to give to the railway companies the right to pool, if they desired to do it. That is true, is it not?

Commissioner HALL. Yes; if we are contemplating a repeal of the law. All we suggested was suspension during the period of the war.

Senator CUMMINS. That would be a temporary repeal. For instance, take two of the railroads out in our country. Suppose it were desirable, from a public standpoint, that the Chicago, Burlington & Quincy Railroad and the Chicago, Rock Island & Pacific Railway Co. pool their earnings. However desirable it might be, the public would not get any advantage from it unless the railroads were willing to do it; is that not true?

Commissioner HALL. No; the public would not.

Senator CUMMINS. And the question of pooling, therefore, by which there would be an increase in the efficiency of the property, would depend entirely upon the voluntary action of the railroads. You remember, do you not—I think you were present when we were considering what is known as the Priority bill—it was proposed to give the President or the Interstate Commerce Commission the authority to take a part of the earnings of one railroad which had been enhanced by reason of the priority orders given it, to another road which might have been injured by the priority orders. Do you remember the attitude of the railway companies upon that proposition?

Commissioner HALL. My general impression is that they felt at that time, as I did, that the thing would largely equalize itself, that the additional burdens would be offset by the additional receipts.

Senator CUMMINS. But broadly speaking, the railway companies were opposed to giving the Government, whether the President or the Interstate Commerce Commission, the authority to take from the

earnings of one railroad and give to another. They were opposed to it, first, upon the constitutional ground that we could not give any such authority, and second, because it would be unfair and unjust. Bearing that in mind, do you believe that the mere privilege of pooling the earnings would be an effective remedy for the present situation?

Commissioner HALL. Senator, I question whether I was present during the discussion to which you have referred. I do not think that any one thing by itself, which you characterize as "mere," would be an effective solution, but the suspension of the antipooling provision, which applies to freights as well as to net earnings, and the suspension, in so far as interfering with joint operation is concerned, of the antitrust provisions, would have put it in the power of the carriers, if they were so disposed, to operate as a unit, in particulars in which they could not operate as a unit without that suspension.

When it is put in the power of those whose business is transportation, to operate as a unit, whether they will do that or not can only be determined by seeing what they do.

As I have indicated, I have felt that the unification could be best secured by the course which the President has seen fit to take.

Senator CUMMINS. I simply wanted to bring to your attention the very natural fact that a railway company would not pool its traffic or its earnings with another unless it could see that it would be benefited in some way by the arrangement, and that would leave uncared for the very situation we are trying to meet, namely, that all these things should be looked at from the public standpoint, and not from the private standpoint.

Senator KELLOGG. I should think it would be a serious question whether the Government would have any right to take the income of one road and give it to another, unless the Government was ready to compensate the railroad for its use.

Senator CUMMINS. Upon the constitutional objection, I have no hesitation in agreeing with the agreement, but the railway companies wanted, at that time, to be given the privilege of pooling, the railroads to initiate the arrangement, the arrangement to be approved by the Interstate Commerce Commission or the President, all the while leaving the initiative and the privilege to be exercised or not with the railroad companies. I have not thought that if the situation is one as grave as has been described it could be met by simply giving to railway companies the right to pool.

Senator POINDEXTER. You have spoken of the confusion and congestion that resulted from a multiplicity of orders and of traffic directors of the Government, mentioning, among others, a committee of the Council of National Defense, and the Food Administration, and I suppose you would include some of the bureaus of the War Department.

Do you know whether that situation is going to be remedied by the creation of this traffic dictator, so-called, and the appointment of Mr. McAdoo as Director General of Railroads?

Commissioner HALL. I have understood that arrangements were nearly perfected for all Government demands to come through one channel, just as the allies' demands now come through one channel, and that would make it very much simpler for the Director General

of Railroads and his operating assistants to handle the situation, and it would make the situation much simpler than it has been.

Senator POINDEXTER. If he does not do that, if this multiplicity of traffic directors in the different branches of the Government you have referred to, and some others, probably, that have not been referred to, are not consolidated, there will be no particular relief, will there, from the appointment of a traffic dictator?

Commissioner HALL. Senator, the powers which the President has exercised and will exercise through the Director General of Railroads are so great that any existing appointment would not stand in the way of that governmental operation as affording relief from whatever was interfering with the successful operation of the railroads.

Senator POINDEXTER. I agree with you that it does not stand in the way of it, but the important thing is whether or not it will lead to the remedy of it, and the same conditions exist which did exist before, which may or may not be remedied, depending upon the manner in which the powers of the railroad controller are exercised.

Now, there is another matter that has been referred to very often, and that is the failure of consignees to unload cars. Recently in the newspapers there have been a number of statements of rather extreme congestion of traffic here in the city of Washington, and I suppose it exists in other cities, which indicated that the railroads were performing their function of hauling cars very satisfactorily, but that they were hampered in that the supplies of the consuming public were not reaching the consignees because the cars were not unloaded on the tracks.

Has the Interstate Commerce Commission done anything to remedy that situation?

Commissioner HALL. It is dealing with such situations as that through the bureau of car service every day.

Commissioner AITCHISON. We have inspectors in the Washington yards working on that matter.

Senator POINDEXTER. Why has it not been remedied? Why are the cars allowed to stand on the tracks for days and weeks without being unloaded? Is there no remedy for that situation?

Commissioner HALL. You have got to get at the facts in each particular instance. You speak of Washington. Apparently a good many of those cars have come in consigned to contractors who have undertaken the construction of new buildings here in Washington for Government use, these contractors not having space in which to store the materials, and they have preferred to leave the cars on the tracks and pay demurrage.

In the cases of cantonments, where the contracts are nearly all on a cost plus basis, allowing a profit of not exceeding a quarter of a million dollars to the contractor, it was a matter of indifference to the contractor how much the cost might be, because it all came out of the Government. Whether there is such a feature in connection with this special construction here in the city of Washington at the present time, I do not know.

But take a somewhat analogous case, the carrying of piling in great quantities to Hog Island, sometimes running over a thousand cars. Those cars have been taken in there, and those in charge

of the work were not ready, and were unable, apparently, to unload the cars, and so they stand there.

There has not been the fullest coordination, so that the supplies would move over the rails only as fast as they are needed, and the cars be sent back to serve their normal purposes again.

Senator POINDEXTER. I infer from that that the matter has been allowed to take care of itself, and that no drastic measures have been taken, in view of the drastic situation, to compel cars to be unloaded. Of course, the Government has control of the situation at the cantonments, has control over the contractors, through the Army officers who are supervising that work, and the Interstate Commerce Commission, as I understand it, has authority over the general question of the handling of cars at terminals.

Commissioner HALL. It may direct the movement, exchange, interchange, and return of cars.

Senator POINDEXTER. No special orders have been issued to compel the unloading of cars?

Commissioner HALL. We shortened the period of free time; we have authorized an increase in demurrage charges, and in various ways have created inducements for the consignees to promptly unload their cars; and what has been of more service than anything else has been the campaign conducted since April to stimulate the shippers to load more heavily and more promptly, and to unload more promptly. That has been productive of great results in a great number of instances.

Senator POINDEXTER. That has been a campaign of persuasion?

Commissioner HALL. Yes, and also something more than that, because it has been made manifest to the shippers that the only way—the number of cars in the country being just so many—that they were likely to get their stuff on the market and disposed of was to load as heavily as possible, and some remarkable results have been reached.

I noticed the other day a shipment of flour from Minnesota to Holyoke, Mass. The ordinary minimum carload would be 40,000 pounds. This car, loaded, consisted of 500 barrels of flour, 100,000 pounds, and it all arrived in good condition, 100 of the barrels in wood, and the balance in sacks. That got into one car what would be the usual content of two and one-half cars, and that has been going on all over the country. The weekly reports show loading up to 110 per cent of the marked capacity of the car. There has been double loading and triple loading.

Senator POINDEXTER. Do you anticipate that this apparent indifference of the consignees as to the length of time cars are held without being unloaded is going to continue to tie up traffic at the terminals as it is tied up now?

Commissioner HALL. If the car is for unloading, it is either on the team track or on the industry track. If it is on the team track, its contents could be unloaded on the ground, but then how about getting in the teams? There are a lot of practical difficulties about it.

Senator POINDEXTER. Have there been any increases in demurrage charges?

Commissioner HALL. Yes.

Senator POINDEXTER. Has that had any affect on the situation?

Commissioner HALL. The shippers seem to think so—yes.

Senator POMERENE. Might it not aid the movement of freight somewhat if the commission was authorized to fix some sort of a penalty for failure to move cars within a reasonable time, from the point of shipment to the point of destination?

Commissioner HALL. Senator, the car before arrival is not earning a thing for the carrier using it unless it is moving, and if not on the home line is running up a per diem charge against the carrier. If it is loaded and standing still it is bringing no revenue to the carrier, so that I do not believe that the carrier needs the aid of a penalty to get him to move the car.

Senator POMERENE. The fact is that there is inexplicable delay, often. I was told while at home that it took several days to move a carload of freight from Canton to Alliance, Ohio, a distance of 17 miles. That condition ought not to be permitted, it seems to me, and it may be that the reason you suggest is sufficient, under ordinary circumstances. It often happens when it is not a sufficient incentive.

Commissioner HALL. Of course, when a car gets in a classification yard, it takes some time to get it out.

(Thereupon, at 12.45 o'clock p. m., the committee took a recess until 2 o'clock p. m.)

AFTER RECESS.

The committee reassembled at the conclusion of the recess, at 2 o'clock. p. m., Senator Atlee Pomerene presiding as acting chairman.

The ACTING CHAIRMAN. The committee will come to order. I think we will proceed with Commissioner McChord.

STATEMENT OF HON. CHARLES C. McCHORD, INTERSTATE COMMERCE COMMISSIONER.

The ACTING CHAIRMAN. Mr. Commissioner, were you present on Saturday and this morning while Commissioner Hall was on the stand?

Commissioner McCHORD. Yes, sir.

The ACTING CHAIRMAN. You heard his testimony?

Commissioner McCHORD. Yes, sir.

The ACTING CHAIRMAN. The committee would be glad to have you state anything that you may desire in addition to what he has said, or where you differ from him, your impressions and views in that behalf.

Commissioner McCHORD. Do you mean with respect to what the carriers could have done?

The ACTING CHAIRMAN. Touching the entire subject of his testimony. It is a very comprehensive question, I know, but I have asked it purposely.

Commissioner McCHORD. I have no criticism to make of the chairman's testimony. I had thought that we should take the railroads as we found them, and find out if we can what the difficulties are, and then look into the future to see what remedies can be applied. I do not concede that the carriers could not have relieved the situation. Is it the desire of the committee for me to give what I know about that?

The ACTING CHAIRMAN. I am sure the committee would be glad to hear you fully.

Commissioner McCHORD. The matter was first brought to my knowledge in November, 1916. At the request of the commission I went to Louisville, Ky., to look into the situation. I had an informal conference there with carriers, or with representatives of the carriers that I had wired for in advance, and they all came. We had a full meeting, and the two days of informal hearings convinced me that it was necessary for the commission to make an order for an investigation, and such an order that after full hearing it could enter an order with respect to the situation.

So I immediately wired the commission and the order was entered, and I proceeded under that order.

I found a very deplorable situation. I found the carriers were violating all of their contracts and arguments with each other, and, as they expressed it, they were deliberately engaged in the pastime of stealing each other's cars. They said they were doing it in self-defense. I found that the greater portion of the equipment had drifted into the eastern territory. Railroads in the West, and especially in the South, were almost stripped of equipment.

The hearing progressed and it occurred that the thing to do was to have a meeting of the executives of the railroads, and I went in conference with the representatives there and gave them my views—what I thought was if we could get a committee of five railroad presidents from five sections of the country to come to Louisville, and to create a committee of vice-presidents, or lower officials; I knew that it was probably impossible for the executives to spend the time that was necessary in Washington as a committee—so therefore I suggested the formation of a subcommittee, but to vest that committee with all the power of the executives. So the representatives of the carriers went into conference and they had some hesitancy about wiring their chiefs about it. They were thoroughly in sympathy with it and gave me some names of executives, and I wired them, and in response to that this executive committee came to Louisville. They had been advised in advance as to what the plan was that I suggested. Mr. Markham, of the Illinois Central, was chairman of that executive committee.

Senator WATSON. When was that?

Commissioner McCHORD. The first of November, 1916. I went into conference with them and they were very enthusiastic over the prospect of relieving the situation, Mr. Markham and the committee assured me that this committee that they had appointed was vested with all the power of the executives, and as he remarked to me, "They, having the power of the executives, and the Interstate Commerce Commission having all the balance of the power, there should be no difficulty in unraveling the situation."

I had not yet finished the hearing, and I proceeded with it and stayed there about three or four days longer, and then I adjourned the case to Washington, left it open with the idea that it would probably be necessary for the commission to issue an order. I found this committee in Washington when I came back and then proceeded. I had not gone very far along until I found that they were restrained in some way. If the power had been given to them by the executives, they were not entirely willing to exercise it. So in order

to test them, I requested them to issue an order and they issued an order to one or two of the railroads, and they refused to obey, so I saw in a minute that they had no power, and I stated to them, "You are wasting your time"——

The ACTING CHAIRMAN. You mean from the other railroads?

Commissioner McCHORD. From the executives. So they said they would get another committee; they would take it up again with the executives. They sent another committee down and we had a communication from the president of the American Railway Association in which he defined the powers of the committee, but we soon found that they did not have the power, and then Mr. Harrison, who is chairman of the executive committee of the War Board, went to New York and came back and said, "We have a committee and these railroad executives have pledged me that they will obey any orders this committee issues." He said, "I want you to go along with us." In the meantime I had gotten impatient about it and told him so, and he said, "I have no fault to find with you about that, but what I want to do is to get results, and I say to you that if they do not live up to the orders that we issue I will use the weapon of publicity, I will punish them." In a short while it developed that they were not obeying that committee's order, and he made good and did publish them.

Senator WATSON. Can you state when that was?

Commissioner McCHORD. That was along in the fall of 1916. Then I saw there was nothing else to do except for the commission to open the case and give notice, and have a hearing, and make an order.

Now I will go back just a little bit. At the Louisville meeting I saw the condition with respect to the open top cars, and I concluded that an order requiring that the open-top cars be sent home to the home line with a load—if they had a load, and if they did not, send them back empty—was the thing to do, and I arbitrarily entered that order verbally. I did that after conference with the carriers, and found that most of them were thoroughly in sympathy with it.

We then got assurances from the carriers that they would obey that order. That was telegraphed in and I asked them to send me a copy of the order that they had entered to be sure, which was done. So when it came to the commission taking the case up again, we issued an order to show cause why a certain order should not be entered, and we had the hearing and the case was submitted, and after the case was adjourned, Mr. Atherbury, then chairman of the American Railway Association, came to me and said Mr. Harrison had resigned, and they were going to move the committee to New York and wanted me to go there, and wanted me to send Mr. Dow, an attorney examiner who was in my office, and who had been through the controversy with me, and I declined to do it; I did not see that anything could be accomplished, so the commission went ahead and issued the order, as appears in its report—I. C. C., volume 42, pages 702 to and including 706, a copy of which report I make a part of this report.

Then the question of closed cars came up and they sent another committee down for the purpose of enforcing the rules in cooperation with the Interstate Commerce Commission in respect to closed cars. In the meantime we had to postpone the effective date of our order with respect to open top cars.

Senator WATSON. Will it interrupt you if I ask a question?

Commissioner McCORD. Not at all.

Senator WATSON. Did your first head order, as we call it, apply only to open top cars?

Commissioner McCORD. Open-top cars. We were apprehensive that the issuance of an order with respect to the box cars would create confusion and we refrained from doing that, but we found no difficulty about the other.

Then the committee with its new rules with respect to closed cars came down—what we know as the Shaffer committee. We found it a very earnest committee, wanting to cooperate with the Commission and do its part, but we still found there were some roads that would not work in harmony and declined to obey their orders. Then I asked the chairman to join me in a hearing of the executives, and wired them. That was on the 5th day of April, so we had an all-day seance in which they washed their dirty linen.

The ACTING CHAIRMAN. Who do you mean by "chairman," when you speak of "chairman"?

Commissioner McCORD. Chairman Hall.

I had had charge of the car-service case and asked the chairman to come in and we had that hearing. Various propositions were made by a great many of the carriers, including, I recall, Mr. Aischton, of the Chicago & North Western, and Mr. Holden, of the Burlington, and others, especially the western and southern carriers, were very anxious for the commission to issue an order. They said nothing would be accomplished without it, and those who opposed it said that a \$5,000 penalty was too severe, and that mistakes made by employees would involve them in enormous costs and fines; so I suggested that it might be enforced as the safety appliance laws are enforced. We do not prosecute every violation of the safety appliance law, only flagrant violations. If we did, we would have to be in court all the time. But the prosecutions that were entered into have minimized the trouble with respect to the safety appliance violations. I made that suggestion to them and a great many of the carriers were in sympathy with it. They said they would have a meeting and would come back with resolutions agreeing to it, and waiving the question of further hearing.

So when they came back on the 6th, it was nothing but a resolution calling on the Interstate Commerce Commission to approve their rules which had proven a failure, and I declined to receive it, and Mr. Hale Holden, who was chairman of that committee, said he would take it back to the executives and they would send a committee down with power. The next I heard of it was on the 11th of April, five days after that. The executives came to Washington, and they issued a proclamation which stated that they were spurred on by patriotic motives; that they had now consolidated all their interests and nationalized their railroads; they had contracted with each other and contracted with the Federal Government and the governments of the States to do that, and they then went along with their activities. Now, that committee did some good——

Senator WARSON. In other words, that is what occurred immediately after our declaration of war.

Commissioner McCHORD. Yes, sir; war, I think, was declared on the 6th, and this was on April 11. But they did not proceed as far as they should have; they did not nationalize to the extent of pooling all their facilities. I said to one or two of them "you have a great opportunity here; you have the summer before you, and you have an opportunity here to clean up and clear up the situation, and unless you do, when winter comes, you are going to get into trouble, because somebody will have to take these roads and operate them that way."

They speeded up their trains; I think they probably got 15 per cent additional speed on their trains. The shippers cooperated with them. They had heavier loading, and some good results were obtained, but nothing like in my opinion what could have been accomplished. Then, they came on a short time ago; they nationalized again, and appointed a subcommittee which had a meeting at Pittsburgh. I do not know about the activities of that committee. I do know that they appealed to us to get some information from the carriers who were parties to the nationalization that they could not get themselves. So, as I said in my special report to Congress, I thought it was absolutely necessary for some one to take hold of those roads and nationalize them, because they had not done it.

The ACTING CHAIRMAN. You spoke of the necessity of their nationalizing to a greater degree than what they in fact did. Did you understand that they hesitated because of what might be regarded as legal restrictions?

Commissioner McCHORD. I understood from the last proclamation, they said they had no doubt about that; that under the laws creating the fuel and the preference commissions they had all the law that was necessary for that, and they could do it. When they first nationalized in April, the Interstate Commerce Commission—

Senator LA FOLLETTE. Did they make that statement in writing?

Commissioner McCHORD. Yes, sir.

Senator LA FOLLETTE. Is it in the record?

Commissioner McCHORD. I do not know whether it is here or not. I could supply it.

Senator LA FOLLETTE. I wish you would.

Commissioner McCHORD. Both the resolution that came in in April and the one that came in a few weeks ago?

Senator LA FOLLETTE. Yes; and particularly the statement made that the law was ample as it then stood.

Commissioner McCHORD. I do not know that I have that, but I saw it in print. I will see if I have it at my office.

Senator LA FOLLETTE. If you have it, please supply it.

Commissioner McCHORD. I saw it in the press as it came from them. I will try to find it. Now, the difficulty about nationalizing and the laws against pooling and the antitrust I do not think stood in the way here.

It meant more the question of the railroad short hauling themselves. They have agreed to do this and pooling their equipment and pooling their facilities, it simply meant traffic arrangement with the shortest route to get it through.

Senator WATSON. In other words, your opinion is that if they had nationalized the roads as they might have done, that they themselves under their management could have so directed and operated the railroads that they could have handled traffic?

Commissioner McCHORD. I think so, and the commission said in the car-service case, I. C. C., page —:

The commission is of the opinion that prompt relief for existing car-supply conditions can be secured through executive action; that it is the duty of all the carriers at once to appoint a committee, as contemplated at the hearing, vested with plenary power to secure a relocation of cars and to cooperate with the commission at Washington in order that we may be fully advised as to the situation from day to day. If this is done, and it is found that any modification of our order is necessary before or after the effective date thereof, the fact thus brought to our attention will be considered with that end in view. Unless this is done within 10 days from the service of this order the entry of an order prescribing car-service rules for other classes of equipment will be considered.

It was our thought, with the case still open, that we might issue orders from day to day when difficulties arose; but they did not do what they promised; they did not carry out their nationalization scheme.

Senator WATSON. That is, the present railway management committee did not?

Commissioner McCHORD. No, sir.

Senator WATSON. Are the figures correct—I assume they are—that I read here this morning to Mr. Hall, that they gave, showing that they had increased 20 $\frac{1}{2}$ per cent over 1916?

Commissioner McCHORD. I assume that is so; yes, sir; and if they had actually nationalized and short-hauled and made their terminals one and made the equipment all one, and if in the summer time or in the fall they had done these things and gone West or South or anywhere and gotten the engines that we were told about and had them brought East, these things would have cleared the situation up.

Senator WATSON. Then it is your opinion that that might have been done by proper coordination and cooperation, without additional equipment?

Commissioner McCHORD. I think so. I think probably they may need more locomotives; they have 2,600,000 cars. Now, what I am stating is in no wise a criticism of these gentlemen composing this committee, because I am quite sure they were trying to do the best they could, but they could not get away from their own corporate interests. That was the trouble. They say they moved 236,000 cars in eight months. Well, 236,000 cars, when every day of that eight months they had 2,600,000, is not a very great movement.

Senator WATSON. How many did you say they moved?

Commissioner McCHORD. The carriers owned 2,600,000 in all, and in the eight months the committee says it ordered 236,000 moved.

When I say the corporate interests, take the three lines from New York to Chicago—the Erie, Pennsylvania, and Baltimore & Ohio. It is claimed that instead of putting an embargo on traffic and diverting it to the lines that could carry it, that those three lines had been taking all the traffic that would come to them, and consequently the congestion. It is only within the last few days that I have seen that statement, and that is an illustration, from the president of one of the large railroads of the West—I do not feel at liberty to give his name unless the committee requires it—but he did not give it in confidence.

The ACTING CHAIRMAN. Does the information of your commission, which it has collected from time to time, indicate to you that that

claim is correct—that those three systems of railroads are attempting to handle more than they really can handle over their lines, and if it were diverted to other lines it could have been handled?

Commissioner McCHORD. Yes. I have not been in very close touch with the car distribution matter for quite a while—some months. I take it it is not confined to those three railroads, but it is practically true of all. It is the eagerness of the traffic men to get freight; it is the corporate interest; it has been rather their inclination to take all that is tendered to them.

The ACTING CHAIRMAN. To what extent has there been delay in the movement of freight over these different systems which is above the normal traffic conditions?

Commissioner McCHORD. That is very serious everywhere, over nearly all the railroads, but especially here in the East.

The ACTING CHAIRMAN. During these months is it true that there were locomotives on the western roads and southern roads that could have been diverted to the eastern territory so as to relieve the situation?

Commissioner McCHORD. I assume so, because they said they brought over a hundred from the West and have gotten 25 from the South.

The ACTING CHAIRMAN. When was that order made?

Commissioner McCHORD. I saw it—it just came as information into the office—I think probably a month or three weeks ago. They also said they were endeavoring to get some other locomotives that were being constructed for the Russian Government—

Senator CUMMINS. You are not speaking of the order of the Commission but the order of the Railway War Board?

Commissioner McCHORD. Yes, sir.

Senator WATSON. Do you know how many engines we have sent to Russia and France?

Commissioner McCHORD. No, I do not. We have, I know, sent some engines over there that were lost en route. I do not know whether those were for France or Russia. Twenty-five were lost on one shipment, but I do not know how many we have sent.

The CHAIRMAN. The statement given in the memorandum furnished us by the American Railway Association, bearing on that subject, throws some light upon it. Now you spoke of the further nationalization of these different railroad systems, and if that were adopted it is your judgment that we could have relieved the situation. I wish you would go more into details and point out how that could have been done, in your judgment.

Commissioner McCHORD. By doing just what they announced to the public that they had done, consolidated their entire interests, and by pooling their equipment, and making their terminals one and routing the freight over the shortest route and getting it to destination in the shortest time. I think those three things could have been done.

Senator CUMMINS. This further nationalization of which you speak related only to the eastern districts, did it not?

Commissioner McCHORD. Well, I may say—

Senator CUMMINS. I mean the one that occurred just a few weeks ago?

Commissioner McCHORD. Yes, that related only to the eastern district, and I do not see how that could well be carried out without the

nationalization of all of them, because if you want to get a movement from the West and South, if those roads were not parties to the nationalization. It should be a complete nationalization.

The ACTING CHAIRMAN. Now, Mr. McChord, I called the attention this morning of Commissioner Hall to the Esch Act, and to what the Commission had done under that act. Let me ask you, could not the situation have been somewhat relieved if those who were interested in the administration of the coal law had not forbidden the loading of coal for the Lake Region over and above the shipping accommodations that they had for that coal; in other words, my thought is that there was no reason why the terminal facilities in Cleveland and Toledo, and the railroad yards everywhere, should be laden with this coal for the Lake Region when they did not have the ships or bottoms in which to move it.

Commissioner McCHORD. I may be wrong about it, but I think that is a situation which requires arbitrary action on the part of somebody.

My recollection of that Lake port matter is that it came up to the commission in this way, as to whether the hopper-bottom cars could be shuttled back and forward to the Lake ports in that traffic, while it could have been without an order, yet I thought that it would be quite wholesome for the commission to enter an order under the Esch bill. I believe in the commission exercising all the power it has, if we are ever going to get results. But the carriers having all come in and asked that they be permitted to do that, immediate permission was given. I found out afterwards, however, that some of those cars were taken out of that service, and were sent up East with coal. It was brought to my attention that that was done. How many, I do not know.

The ACTING CHAIRMAN. To what extent has the issuance of these priority orders interfered with the transportation of the country?

Commissioner McCHORD. That is a very hard matter to tell. You understand, of course, that there is no business on earth where the regular order is required more than in the operation of a railroad when a priority order is given; to illustrate, if the train is started with Government freight from Washington to New York it goes along the line, as the Government's priority train, and everybody must get out of the way. It is like a gang of section hands repairing a track; when a train comes they have to take up their tools and get out of the way and wait until the train passes. My idea is that we ought to have the regular order in the running of trains, the Government, of course, is to have the preference in loading cars, preference ahead of everybody, but if you run freight trains from Washington to New York two hours apart, the Government must have preference with respect to those cars, and if you can not get it on the first train put it on the second, and the ordinary shipper must wait. But I think we must look out for the business interests of this country because if that is not preserved, manufacturing concerns and industries will go into bankruptcy. One of the great sinews of war that we have is money, and I do not know where the money is to come from to buy Liberty Bonds to raise the money for the war if we do not preserve those industries. Of course I realize that Government material must have preference and must go ahead;

arms and munitions must go first, but other things, I think, must be looked after.

The ACTING CHAIRMAN. Is it true that confusion has arisen out of the fact that different priority orders have been issued by various departments of the Government, without being issued by some central authority?

Commissioner McCHORD. I think so, undoubtedly.

The ACTING CHAIRMAN. I want to call your attention especially to a statement that you make in your minority report. It is that part of the report in which you refer to the necessity of securing to each road its portion of earnings, and to the necessity of further financing those roads, and I would like you to develop that thought along that line and indicate to us the methods by which this should be done.

Commissioner McCHORD. My recollection is that what I said there was that while these things might be necessary yet they would not get those cars moving if that was the law. I do not think I undertook to point out how this should be done.

The ACTING CHAIRMAN. I do not think you do, but I was just wondering what plan you had in mind.

Commissioner McCHORD. I said, "For this purpose legislation assuring the carriers a fair return may be appropriate." I did not undertake to commit myself about that, because of the fact that in every rate case, whenever it comes along, we have to consider what return the carriers are to have for doing the business, and I purposely refrained from doing that because of that fact. We have cases that are pending now in which that very question is involved, and in a report of this sort I would not want to commit myself to any proposition. Of course I might generalize about it.

The ACTING CHAIRMAN. Let us assume that since the Government has taken control of these roads, it may be necessary to divert rolling stock and engines from one road to another, or to divert freight and traffic from one road to another. Necessarily, that is going to interfere with the normal earnings of the road under normal times. Now which plan would you adopt to look into an adjustment of those differences among the several roads?

Commissioner McCHORD. I had in mind, Senator, that these roads had contracted with each other, and had contracted with the Government—the Federal Government and the States—to do this very thing, and what I wanted to do was to go ahead and do it. Of course if a road short hauls itself coming from the west, and hauls a portion of that traffic that it moves, if it had taken the longer route it may have made it up in traffic that comes from the west or south or north, and I think I had in mind all along that these carriers had contracted with themselves that they were going to do that thing, and when the Government took them over, it took them just as it found them, with the War Board having all the authority vested in it. I take it that Congress will treat them fairly in whatever is necessary to be done, and the suggestion made in the President's message that they take the average of the three years and guarantee that to them—if a guaranty of that nature is to be made, this is war times and those were war years, and it might be measured by that, although I do not know, and I have not made up my mind whether that will be fair to the Government.

The ACTING CHAIRMAN. You are assuming then that there has been some arrangement of the kind indicated by the railroads themselves?

Commissioner McCORD. Themselves; yes, sir. They said it in that proclamation. I think I have the proclamation here.

The ACTING CHAIRMAN. I would be very glad to have it inserted into the record.

Commissioner McCORD. No, upon looking I find that I do not seem to have it.

Commissioner CLARK. If I may interrupt you, Senator, I think it is quoted in the answers of the railroads to the committee's inquiries in this communication.

Commissioner McCORD. I do not want to be understood as saying that they should be held to that, but that is what they did.

The ACTING CHAIRMAN. I know you have been a student of this subject and I was anxious to have your views on it.

Commissioner McCORD. Here is the resolution:

Resolved, That the railroads of the United States, acting through their chief executive officers here and now assembled, and stirred by a high sense of their opportunity to be of the greatest service to their country in the present National crisis, do hereby pledge themselves, with the Government of the United States, and with the governments of the several States, and one with another, that during the present war they will coordinate their operations in a continental railway system, merging during such period, all their merely individual competitive activities in the effort to produce a maximum of national transportation efficiency. To this end they hereby agree to create an organization which shall have general authority to formulate in detail and from time to time a policy of operation of all or any of the railways, which policy, when and as announced by such temporary organization, shall be accepted and earnestly made effective by the several managements of the individual railroad companies here represented.

Now, I do not mean to say that the Government would undertake to hold them to that. They were doubtless sincere when they did it, that is, when they passed that resolution and when they undertook it, but they did not carry it out.

The ACTING CHAIRMAN. This states, if I have read this correctly, their proposition in a general way and shows clearly their preference, but it does not seem to point out the method of distributing their earnings as amongst themselves.

Commissioner McCORD. No, sir; it is a general power delegated to those five persons who were made trustees for them. I do not attach great force to that, but that is just one of the occurrences that has happened here.

The ACTING CHAIRMAN. There has been a good deal of discussion about the lack of proper equipment in a number of these roads, and there is a sort of general understanding that it may be necessary for the Government to furnish funds for the purpose of getting additional rolling stock and motive power. What, if any, legislation do you think would be necessary in order to permit this to be done?

Commissioner McCORD. I think the proper way, whether it is by legislation or not, should be for the Government to ascertain just what their necessities are and let them issue their own securities, and let the Government take those securities at a low rate of interest, and hold the reins as to the expenditure of money.

The ACTING CHAIRMAN. And in dealing with that subject to provide for each road in accordance with its needs?

Commissioner McCHORD. I think so.

The ACTING CHAIRMAN. That is all I care to ask.

Senator CUMMINS. Mr. McChord, in speaking of the effort of the railway companies themselves to unify their activities, you referred to the resolution that was passed by what is known as the railway war board on April 11, 1917?

Commissioner McCHORD. Yes, sir.

Senator CUMMINS. That board was organized under the suggestion or direction of Commissioner Willard, who is associated with the Council of National Defense?

Commissioner McCHORD. The Interstate Commerce Commission had been after them to create such a board with such powers since November, and was after them on the 6th of April to do that thing.

Senator CUMMINS. That is the point. That is the board of which Mr. Harrison is chairman?

Commissioner McCHORD. Yes, sir.

Senator CUMMINS. You do not understand that there is any way of enforcing the pledge which the board gave to the country at that time?

Commissioner McCHORD. You mean now?

Senator CUMMINS. Now or at any time since the resolution was passed?

Commissioner McCHORD. I would have tried mighty hard if I had been in charge.

Senator KELLOGG. You mean enforcing it against an individual road?

Senator CUMMINS. Yes.

Commissioner McCHORD. All of the individual roads, I understand, were parties to that.

Senator CUMMINS. You understand that the individual roads had given the war board the authority to use each road as a part of a general single system?

Commissioner McCHORD. I understand so.

Senator CUMMINS. And as part of that arrangement, it became the duty of any given railroad to divert traffic from its own line to other lines if the traffic could be moved more promptly?

Commissioner McCHORD. I think so.

Senator CUMMINS. And more efficiently by so diverting it?

Commissioner McCHORD. I think that is what nationalization means.

Senator CUMMINS. Are you familiar with the order which the board did give to individual railroads with regard to diversion and movement of any particular traffic?

Commissioner McCHORD. No, sir; I am not.

Senator CUMMINS. Do you know of any instance in which an individual road declined to obey the direction of the board in that respect?

Commissioner McCHORD. You mean the board as created in April?

Senator CUMMINS. As created in April; yes.

Commissioner McCHORD. No; I do not. I am not familiar with that at all. But in that connection, Senator, I do know that this official of this railroad made this statement—the western line that I have spoken of—I did not want to give his name unless the committee asked it:

If the Pennsylvania and Baltimore & Ohio, and Erie should send some of the freight which is now delivered to them over their line, their own line could be cleaned up and business moved more freely between the West and the East. Those lines still take all that is offered. They are pigs, and an embargo should be declared against them. This disposition to permit something to get out of their grasp if they can prevent it, not only congests the movement of loaded cars but also ties up empty cars. Many empty cars are now being held by this line which are needed sorely by western connections. If the Pennsylvania and other congested lines would refuse to receive freight which other lines could very well handle, their own lines would get cleared up and they would have a better chance to do business.

And it is my understanding that the chairman of our committee on car service agrees with that.

Senator CUMMINS. Assuming that the several railroads obey the orders for the distribution of freight, and assuming that the orders had been given that were necessary to move the freight and promptly, the roads could have done under this resolution—if it had any legal binding effect—about all that Government operation could do?

Commissioner McCHORD. A voluntary committee could not, in my judgment, accomplish it as completely as some one clothed with the power of the Federal Government.

Senator CUMMINS. The fundamental difficulty or weakness in the resolution, or the practice under the resolution to which we have referred, is that there is no way of enforcing it?

Commissioner McCHORD. Yes, sir.

Senator CUMMINS. There is no sanction, in other words, to the arrangement? It could be disobeyed at pleasure and without penalty?

Commissioner McCHORD. It is purely voluntary.

Senator CUMMINS. And as you have just said, it is too much to expect of human nature that the manager of a particular road could, very impartially at least, determine between the needs of the public and the profit of his own company?

Commissioner McCHORD. That is true.

Senator CUMMINS. And that is the real point gained by Government operation, is it not?

Commissioner McCHORD. I think so.

Senator CUMMINS. You do not know of any way in which that weakness can be removed from the situation, except through a direct—ing power whose orders must be obeyed?

Commissioner McCHORD. The strong arm of the Government.

Senator CUMMINS. In all this it must be understood that I think the railways have made great improvement in the movement of traffic, and I do not want to be regarded as disparaging the railway management.

Commissioner McCHORD. Nor do I.

Senator CUMMINS. But there is a weakness in it that can not be removed in any way but the way you have suggested in your recommendation?

Commissioner McCHORD. That is my idea. However sincere, however earnest the managers of these railways may want to carry out its policy, yet if one of them finds his competitor is not living up to the same thing he is not going to do it.

Senator CUMMINS. In the questions I am about to ask you I want you to feel at perfect liberty to decline to answer any one that you think trenches upon the properties of one who holds your position.

Senator KELLOGG. May I ask, Senator Cummins, if you are going on with an entirely new subject now?

Senator CUMMINS. Just very briefly. I will leave it in a short while. The Government has taken over all these properties, and if we have a Constitution left, and I think we have, the Government is bound to pay for the use of it during the period that it remains in occupation and operation, and it must pay, I take it, under the Constitution, a just compensation for the use of the property. Will you give us some idea of the stage to which the commission has arrived in the valuation of the railway properties in the United States?

Commissioner McCHORD. Well, it is pretty hard to say, Senator. We are gathering quantities, and have been for several years, and the estimate that has been made by our director, and from what we could see of it, is that by 1920 or 1921, at least, we will be through with it.

I am reminded that the inventory work is very rapidly approaching completion, and that our director says that under stress it could be crowded to the extent of completing it within 12 months. That does not include pricing, of course.

Senator CUMMINS. In carrying on the work of valuation, there is accompanying it a vast amount of other work which it was necessary for the commission to do, I take it—work which may be lessened under the existing condition. How soon do you think the commission, by devoting its energies, all the energy it can command, to the valuation of the properties, will be able to give that valuation?

Commissioner McCHORD. Well, I do not know. If we can get the field work finished the commission ought to be able to thrash all these cases out and decide them in the year following. But we are not going to wait on that, because they are going on now, and cases are being set down for final hearing now.

Senator CUMMINS. Assuming that the Government continues the operation of the railways, well, during the war—none of us can tell, of course, when it will end—the Director General, under the proclamation of the President, will, I assume, fix the rate of transportation ultimately, and will relieve the commission of a very great amount of its work?

Commissioner McCHORD. I do not understand that it will result in that, Senator.

Senator CUMMINS. That is a mere conjecture. I do not know. I would assume, though, that the director of the railroads would in the first instance fix rates, if any were to be fixed, and that the restrictions which are now put upon the railway companies in an initiative way will be removed.

Commissioner McCHORD. I do not understand the proclamation includes that.

Senator CUMMINS. As I remember, the proclamation said, in effect, that the Constitution of the United States and the various States, and the laws of both, and the orders of the Interstate Commerce Commission, would remain in force until changed by the Director General. Do you not remember some such provision as that in the proclamation?

Commissioner McCHORD. I do not know to what extent.

Senator WATSON. Have you a copy of the proclamation?

Senator LaFOLLETTE. You do not mean that the Director General would wipe out what is left of the Constitution, do you?

Senator CUMMINS. Oh, no.

Senator WATSON. That is what your question was.

Senator CUMMINS. If you have the proclamation there I would be glad to refer to it. I am not saying this in a facetious way, because I am ~~not~~ able to perceive any other plan.

Commissioner McCHORD (reading):

Until and except so far as said director shall from time to time otherwise by general or special orders determine, such systems of transportation shall remain subject to all existing statutes and orders of the Interstate Commerce Commission, and to all statutes and orders of regulating commissions of the various States, in which said systems or any part thereof may be situated. But any orders, general or special, hereafter made by said director shall have paramount authority and be obeyed as such.

Senator CUMMINS. I find I have put into my question the Constitution, but I do not see any particular immunity the Constitution has, if the statutes of the United States and of the several States, and the orders of the commission may be set aside, and I am only mentioning it to indicate that the Interstate Commerce Commission may be able to devote more time, more energy to the work of valuation than it could possibly do in connection with the jurisdiction which it has heretofore exercised.

Commissioner McCHORD. Yes; we can only try those cases as fast as the quantities are gathered and sent up to us. Of course, rate-making men can not go out and gather those, but the commission has divided its work down to the point where as fast as these quantities are gathered and cases are made up and come to us we can determine them. I think in the new arrangement that we have for expediting the preliminary work of valuation we should be able to proceed much faster with it.

Senator CUMMINS. But in a year or two, at any rate, we will be able to learn the valuation of these several railway properties, as determined by the Interstate Commerce Commission?

Commissioner McCHORD. Whether we will get them all valued within that time or not is mere guess, and I think in view of the present status it would be the duty of the commission to expedite that as speedily as it can be done and get the valuations made.

Senator CUMMINS. And with that work so well in hand and so far advanced it will not be long before the Interstate Commerce Commission, sitting as a judicial body or as a semijudicial body, could determine what is a fair valuation of the use of this property pending the war, if it lasts so long.

Commissioner McCHORD. Well, we might hope so, Senator, but of course we have about 260,000 miles of railroad, and we should hope to be able to make good the directors' estimate of it and have it out by 1920 or 1921.

Senator CUMMINS. The Interstate Commerce Commission, with the information it has, and with the work it has done upon valuation, could determine the value of the use of the property much more quickly and certainly than any other tribunal that could now be created or organized, could it not?

Commissioner McCHORD. We ought to; yes, sir; we ought to be able to do that.

Senator CUMMINS. And, of course, you recognize that inasmuch as the railways have recently been taken over and will remain undoubtedly during the war in the possession of the Government, that the great question which remains to be settled is the compensation which shall be paid for the use of the property while the Government has it?

Commissioner McCORD. Yes, sir.

Senator CUMMINS. That is all I care to ask.

Senator KELLOGG. Mr. McCord, I would like to return to this question of the coordinating of the railroads. I take it from your testimony that what you mean is that the railroads failed to coordinate all their properties, including equipment, and failed in dividing up traffic or routing traffic over lines less congested; is that true?

Commissioner McCORD. Yes, sir; I am of that opinion.

Senator KELLOGG. Now, in that coordination, did I understand you to mean that they should have used their equipment as though practically all the railroads in the United States were one single road?

Commissioner McCORD. I thought that was what they had agreed to and what they intended.

Senator KELLOGG. That would require the power to take the equipment off one road, such as engines, which are essential to the line and use them on another?

Commissioner McCORD. Yes, sir.

Senator KELLOGG. Cars, to a greater or lesser extent, travel off the roads, but to a large extent they are local, is that not true?

Commissioner McCORD. Why, yes, sir; to a large extent, but you find a great many railroads that have less than 50 per cent of their own cars.

Senator KELLOGG. That is quite true. Now it also necessitates, as you stated, I think, in substance, that if a railroad turns away, or if this committee should take traffic from one road to a line less congested, some arrangement of division of earnings or compensation to the line injured, does it not?

Commissioner McCORD. Under their contracts with each other, or agreement with each other, I had assumed that went without saying.

Senator KELLOGG. But they would have to do that, would they not?

Commissioner McCORD. They would have to get less. The line that did not get the full haul, that got the short haul, would have gotten less than it would have if it had taken the entire length of the haul.

Senator KELLOGG. They would have to make compensation to each other?

Commissioner McCORD. Yes, sir; they would have to have traffic arrangements.

Senator KELLOGG. Now to a greater or lesser extent, commencing with the time you took hold of it, the railroads gradually went into that system, did they not?

Commissioner McCORD. Yes.

Senator KELLOGG. They went rather slowly at first, did they not?

Commissioner McCORD. Yes.

Senator KELLOGG. Now is it not quite likely that the fact that those roads had under the law been required for many years to operate as

separate units and as competitive units, rather than one system pooled in the whole United States, had something to do with the slowness with which that was inaugurated?

Commissioner McCHORD. That is possibly true to a certain extent, but the Interstate Commerce Commission gave them all the encouragement that was possible in order to do that thing, because the commission put one of its members on the board ex "officio," and to that extent if we had any power to consent to it, we did so.

Senator KELLOGG. Did the Attorney General approve that?

Commissioner McCHORD. We did not ask him.

Senator KELLOGG. Now, under section 5 of the interstate commerce act it provides—and I would like to call your attention to it—

That it shall be unlawful for any common carrier subject to the provisions of this act, to enter into any contract or agreement or combination with any other common carrier or carriers for a pooling of freight of different and competing railroads, or to divide between them the aggregate or net proceedings of the earnings of said railroads, or any portion thereof; and in any case of agreement for the pooling of freight as aforesaid, each day of its continuance shall be deemed a separate offense.

Commissioner McCHORD. That was not the case here, as I understand it, not to pool their earnings, but to pool their facilities and equipment, and whether they lost or whether they won.

Senator KELLOGG. Well, they would have to pool their freight, to a certain extent, would they not?

Commissioner McCHORD. I do not understand so.

Senator KELLOGG. You believe it would be entirely legal, under that, to divide up freight between the lines receiving more than was reasonable to give it to a line receiving less?

Commissioner McCHORD. I do not say that, but I do say if freight started on a certain line from point A to point B, that was going by a certain route, that is at a certain rate, that if they found at some point it could go by a shorter route and get there sooner, I say that under their agreement they ought to take it there by the short route, and the line that it started on, that was to get the long haul, to that extent, would be deprived of whatever the shorter line was entitled to.

Senator KELLOGG. But to a greater or lesser extent, they have to arbitrarily route freight off of a congested line and onto a line not congested?

Commissioner McCHORD. Undoubtedly so.

Senator KELLOGG. And in some cases they might have to make compensation to a line where the freight had been diverted from it, had been routed, in order to do justice between them, would they not?

Senator CUMMINS. I would like to suggest to you, Senator Kellogg, in that connection, that in the amendment to the Interstate Commerce Commission law of 1910 there was put in a provision allowing the shipper to route his freight when it was over two or more lines.

Senator KELLOGG. Precisely.

Commissioner McCHORD. They could have come to the Interstate Commerce Commission and probably gotten release from that.

Senator KELLOGG. But suppose a shipper routed his freight over a congested line, and the committee said "it should not go by that

route; we are going to route it somewhere else." There might be some question about the legality of it.

Commissioner McCORD. That is undoubtedly so, but necessity makes law.

Senator KELLOGG. That is what I am coming to. Is it not a fact that when war broke out and they thought the Government would stand behind them, they rapidly changed their system of doing business?

Commissioner McCORD. Well, I do not know about that; I do not know whether they got that assurance. As I say, the Interstate Commerce Commission gave them all the assurance we could give, and as I understand it, under the last proclamation, they said they were protected under either the preference or the fuel bills.

Senator KELLOGG. Yes; the preference bill provides—I was going to call your attention to it:

And during the continuance of the war in which the United States is now engaged, the President is authorized, if he finds it necessary for the national defense and security, to direct that such traffic or such shipments of commodities as, in his judgment may be essential to the national defense and security, have preference or priority in transportation by any common carrier by railroad, water, or otherwise.

That is the one you refer to?

Commissioner McCORD. Yes.

Senator KELLOGG. The question, I suppose, would naturally arise whether that was broad enough to authorize the carriers to practically consolidate all their roads and direct the routing of traffic as they saw fit. I do not know whether they had any doubt about that or not.

Commissioner McCORD. I do not know, but my recollection is that when they made that statement or when they issued this last proclamation, they said they did not have any doubt.

Senator KELLOGG. That is, they stated in their last statement put out after this committee was formed in Pittsburgh, that they were not doing anything in violation of law?

Commissioner McCORD. Yes.

Senator KELLOGG. They would naturally state that, would they not?

Commissioner McCORD. They went farther than that, and said what they ordered the committee over there to do was not in violation of law.

Senator KELLOGG. Well, if that law gave the President that power, then he had all the power necessary without taking over the railroads, had he not?

Commissioner McCORD. I do not think so. I do not think that statute did away with the pooling, the antitrust and interstate commerce acts. I do not think it did that.

Senator KELLOGG. And you believe so far as the operation of the roads is concerned, at least during the war, those acts should be done away with?

Commissioner McCORD. I think that anything should be done to get the freight movement started.

Senator KELLOGG. I am asking you specifically if you think those acts were obstacles to the efficient operation of the roads.

Commissioner McCORD. I do not think so. I do not think anti-pooling was. They could operate without that.

Senator KELLOGG. In other words, they could operate—they could operate the entire system of the United States as one system?

Commissioner McCHORD. Yes, sir.

Senator KELLOGG. The Union and Southern Pacific roads as one system?

Commissioner McCHORD. Yes, sir; just as much so as one line with a dozen branches.

Senator KELLOGG. Then so far as the law applied to railroads, it does not amount to much, or do you mean do it under the war power?

Commissioner McCHORD. I mean do it under the war power. Now, Senator, do not understand me to say that these gentlemen who operate these railroads have not tried, for they have, but as I read from the statement of this railroad president, and as is well known, the individual corporate interests of each traffic manager entered into the equation and they could not get away from the second nature.

Senator KELLOGG. Very naturally, I suppose?

Commissioner McCHORD. Very much so. Take, for instance, one railroad competitor of another. It might want to do everything it should do, but if its competitor does not live up to it, it is an injustice to its stockholders to live up to an agreement when the competition fails to do likewise.

Senator KELLOGG. That is, you consider the efficient way to handle the roads, with this enormous burden of traffic, is to operate them as one system?

Commissioner McCHORD. Undoubtedly so.

Senator KELLOGG. Why is it not then the thing to do in times of peace?

Commissioner McCHORD. The roads never in times of peace have been crowded as they are now, and in addition to that, these things must go on. The traffic of this country must go on, not only as to war materials, but you want to keep up the industries of the country, in order that we may earn the money here with which to carry the war on.

Senator KELLOGG. What I wish to get at is, if economy and efficiency is procured in time of war, when we need this enormous traffic by community of operation, would it not be equally procured in time of peace?

Commissioner McCHORD. Yes, sir; but economy and efficiency is a second proposition here. The first proposition is to carry the freight, and then if there are any economies, put them in.

Senator KELLOGG. Well, efficiency, leaving out economy—if efficiency can be obtained by community of operation, it can be obtained by community of operation in peace times, can it not?

Commissioner McCHORD. That is undoubtedly so.

Senator KELLOGG. You said something about lack of equipment.

Commissioner McCHORD. I said I thought they had sufficient equipment. They have 2,600,000 railroad owned cars, but I doubted whether they had a sufficient number of engines.

Senator KELLOGG. I think I saw by your report to Congress that from 1907 to 1916, the railroads had a sufficient or perhaps an excess of equipment. Do you understand during that time they had sufficient equipment, from 1907 to 1916?

Commissioner McCORD. Yes, sir; I think so.

Senator KELLOGG. And it is, I suppose, difficult for them to purchase equipment now?

Commissioner McCORD. Oh, no; they can not do that.

Senator KELLOGG. They can not get them built at the shops, can they?

Commissioner McCORD. No, sir; they can not get that done.

Senator KELLOGG. Many of the roads do not want the money; is that not it? Some have money to buy their equipment and can not buy it?

Commissioner McCORD. Yes.

Senator KELLOGG. I think I understood you to say that the most efficient way to handle the business of the country was to allow the business to take its ordinary channels?

Commissioner McCORD. I mean in the operation of the railroads.

Senator KELLOGG. And not make any priority orders at all unless there is absolute necessity for it?

Commissioner McCORD. Unless there is necessity; oh, yes, sir.

Senator KELLOGG. That is, the fewer the priority orders, the more efficient the operation of the road?

Commissioner McCORD. Yes, sir; I think so.

Senator KELLOGG. You stated in your separate report that "at the present time there are several Federal agencies authorized by law to issue orders or directions with respect to transportation," and then, in substance, as I understand it, that some three or four departments of the Government were separately issuing priority orders. Do you know to what extent priority orders were issued?

Commissioner McCORD. No, sir; I do not. I know it occurred to me once, or to the commission, that we should have a conference with Dr. Garfield and Mr. Hoover and Mr. Lovett, and we did have quite a conference. We had learned that there was some conflict, and that some of the Army officers were issuing priority orders, and it was our thought that we should have coordination of those three legislative boards, and that they should know what the other was doing, and we spent one whole afternoon, or part of an afternoon, but nothing came of it.

Senator KELLOGG. In other words, the War Department, the Navy Department, and the Shipping Board, and the Food Administration, and Judge Lovett were all issuing priority orders of that kind?

Commissioner McCORD. That is my understanding—some sort of orders; all tinkering with transportation in interstate commerce.

Senator WATSON. And the car-service commission.

Commissioner McCORD. Yes.

Senator KELLOGG. And necessarily that causes delay and confusion.

Commissioner McCORD. I should take it so.

Senator KELLOGG. Do you not understand that under this act the power existed to put that all into the hands of one director—the act which I read you a few moments ago?

Commissioner McCORD. No, sir; I did not so understand.

Senator KELLOGG (reading):

That during the continuance of the war in which the United States is now engaged, the President is authorized, if he finds it necessary for the national defense and security, to direct that such traffic or such shipments of commodities as in his judgment may be essential to the national defense and

security shall have preference or priority in transportation by any common carrier by railroad, water, or otherwise.

Commissioner McCHORD. I assumed that that referred to war materials.

Senator KELLOGG. I do not think that was the intention of Congress. I think the intention of Congress was to put it all in the hands of the President. Of course, I can only speak for one.

Commissioner McCHORD. Congress went a little farther than that and passed another law giving him power to take them all over, under which he acted.

Senator KELLOGG. However that may be, those priority orders should all have been in the hands of one power?

Commissioner McCHORD. I do not know about that. It does occur to me that the other parties, who had something to do with transportation, should know just what each is doing, because there ought not to be any crossing of wires. It is a pretty delicate operator to run a railroad with three or four legislative bodies dealing with it.

Senator KELLOGG. Rather. Now, you stated that you found when you first took up this subject, that the railroads were all stealing each other's cars; that is, these cars that passed from one line to another under pressure of business.

Commissioner McCHORD. During the Civil War, I understand when they stole horses they called it pressing them into service.

Senator KELLOGG. The railroad company, instead of returning the car when empty, would keep it and use it?

Commissioner McCHORD. Yes, sir; and in self-defense.

Senator KELLOGG. And that was going on to a great extent before the war?

Commissioner McCHORD. Yes, sir; it was the rule.

Senator KELLOGG. But during many periods of congestion, as I remember in years past, that has gone on to a great extent, too.

Commissioner McCHORD. Possibly so.

Senator KELLOGG. On the subject which Senator Cummins asked you about, compensation to the railroads, have you considered any plan with regard to that?

Commissioner McCHORD. No; I have not, Senator, nor has the commission. I take it the time will come when the commission will probably get together and thrash it out, and may have a plan; I do not know. We usually do things that way. We do not take one commissioner's judgment about the thing. We want the united wisdom, if there is any, of the entire commission.

Senator KELLOGG. That is one of the most important questions now confronting the country, is it not?

Commissioner McCHORD. Yes, sir; I take it that comes under the President's address to Congress, and for that reason I thought we might refrain from considering it.

Senator KELLOGG. I have nothing else to ask.

Senator CUMMINS. There is one point I wish to make clear, Mr. Commissioner. If I understood your answers correctly on this subject, they were to this effect: That in 1915-16 the railway equipment was reasonably sufficient under the system then prevailing—that is, of individual separate corporations—and that the present equipment would be sufficient for use under a unified system?

Commissioner McCHORD. Yes, sir. It may be, and I think it is more than likely, that we should have more engines, more locomotive power, but as to cars, I think we have sufficient.

Senator LA FOLLETTE. Just on that point, would it be possible for you to furnish the committee something more definite in regard to motive power than the necessities of the present situation?

Commissioner McCHORD. I will try to do that. I think there are about 68,000 engines. I will try to get some data on that.

Senator LA FOLLETTE. Will you add that when you come to revise your testimony, going into that as fully as you are able to, with such information as you have acquired in the meantime?

Commissioner McCHORD. Yes; I shall be glad to do so. I would like to file as part of my statement Exhibit E, filed with the car-service report. It is a report made by three members of the railroad committee after the committee was taken away from Washington, which reviews from a railroad standpoint just what happened. It is a matter of three pages.

The ACTING CHAIRMAN. Without objection, that will be inserted in the record.

The exhibit referred to is here printed in full, as follows:

EXHIBIT E.

NEW YORK, January 11, 1917.

SPECIAL REPORT OF INDIVIDUAL MEMBERS OF COMMISSION ON CAR SERVICE.

To the members of the executive committee:

It is well established that the observance of car service rules with respect to returning equipment promptly to owners has in the past been to a great extent superseded by use or appropriation of cars by individual lines governed only by expediency. A disregard for the spirit and letter of the rules on the part of a great many railroads has gradually led to an unsatisfactory observance of such rules in so far as they relate to the railroads collectively. This brought about a condition which rendered it impossible for some of the roads that had amply provided themselves with sufficient equipment to perform their obligations to the shippers directly served by them and their duties as carriers to the general public.

The result of the inability or indisposition of the railroads to regulate these matters on an equitable and just basis was reflected by considerable discontent and numerous complaints from shippers in certain localities. Because of the existing situation the Interstate Commerce Commission considered it necessary to take cognizance of the matter and institute an investigation with specific reference to coal cars, but it was extended to include all classes of equipment. This investigation was initiated by Commissioner McChord in an informal manner in Louisville, Ky., on November 3, 1916. From the testimony of railway officials called before the commissioner and from the evidence of certain shippers he felt justified in requesting the chief executives of the railroads to in some way evolve a plan by which the existing manifestly unfair distribution of freight equipment might be promptly corrected and its recurrence prevented.

In the midst of the transpiring of these events the fall meeting of the American Railway Association was held on November 15, 1916, in New York, having been transferred from Denver because of the serious car situation. At this meeting the association adopted by resolution certain changes in car service and per diem rules to better secure the use of equipment by car owners, providing also penalties for their enforcement by the commission on car service, and these rules were subsequently ratified by letter ballot of members of the association.

The regular meeting of the American Railway Association had been preceded by a conference of executives which had informally approved the action confirmed by the association on November 15. On that date the association named an emergency committee (for a short time known as the conference committee on car efficiency)

to act with Commissioner McChord at Washington in dealing with the situation. It was stated at that time by the president of the association that very arbitrary action would have to be taken by this committee and that it was apparent a crisis had been reached where the railways would have to demonstrate their ability to properly handle their own affairs or some other body would do it for them.

This special committee, with the then existing commission on car service, met Commissioner McChord at Louisville, at which time the commissioner was informed that the American Railway Association had delegated full authority to its emergency committee to handle the car interchange question and to cooperate with the Interstate Commerce Commission at Washington in obtaining reliable information and applying the proper remedies. The members of the emergency committee then took up the work at Washington, and until January 1, 1917, prosecuted it in close cooperation with the Interstate Commerce Commission, Mr. F. B. Dow, attorney of that commission, sitting constantly with the railway committee. Through Mr. Dow, Mr. McChord and the other commissioners were kept informed of the details of the work.

One of the first accomplishments was a joint conference between a representative of the Interstate Commerce Commission, representatives of the shippers, and the emergency committee, which resulted in the approval by the Interstate Commerce Commission of the filing of tariffs, effective on short notice, providing for progressive demurrage, and, by the substantial increase in demurrage rates thus secured, delay to cars at destination will be materially reduced. During the deliberations on this very important matter the question of an increase in the per diem rate was brought up, and it was clearly evident that the powers possessed by the emergency committee, which were subordinated to those of the commission on car service, were unsatisfactory to the Interstate Commerce Commission. Approval by that commission of the higher demurrage had been predicated upon improved car distribution as between the railways and upon an imposition of a much higher per diem rate. As there was considerable difficulty and delay in securing approval of the increase in per diem from 45 cents to 75 cents, the situation was brought to the attention of the executive committee, which committee was impressed with the necessity of investing the emergency committee with increased powers and greater initiative. The executive committee consequently abolished the special emergency committee and reconstituted the commission on car service, which then became the cooperative committee working with the Interstate Commerce Commission at Washington. The only change in personnel between this committee and the former emergency committee was in the chairman, who was the chairman of the former commission on car service.

This reconstituted commission on car service resumed its activities and by cooperation with the Interstate Commerce Commission brought about a conference between the representatives of the shippers and railway traffic officials with a view of establishing reconsignment tariffs that would eliminate well known and long continued abuse of this privilege. The final recommendations of the carriers have been filed with the commission, which will submit them to shippers, and this question is still a pending one between the commission on car service and the Interstate Commerce Commission.

The commission on car service also succeeded in bringing about a uniform agreement between Atlantic and Gulf ports as to reduction in free time at seaboard. It has not been thought expedient to request the Interstate Commerce Commission to approve the filing of tariffs embracing these reductions to go into effect upon less than statutory notice, but these tariffs will be filed in the usual manner.

Concurrent with these events the commission on car service obtained from the railroads weekly reports showing comparisons between cars on line and cars owned, car accumulation reports, status of embargoes, reports of car interchanges, and other data bearing on excess equipment, its location, physical condition and employment. Predicated on these statements the commission on car service issued divers requests directing the readjustment of equipment as between the carriers.

Also associated with these activities the commission on car service performed its duty to the American Railway Association as outlined in the per diem and car service rules. It endeavored to make its activities conservative but effective through the establishment of agencies from which could be obtained first-hand knowledge as to conditions existing on certain railways which appeared from the reports to be abnormal.

It was found that the Interstate Commerce Commission had in the field inspectors who were reporting directly to that commission on cases of car abuse, and as the commission on car service also had inspectors at work, special arrangements were made by which the inspectors of the Interstate Commerce Commission and those of the American Railway Association might work in harmony for the common good.

Many complaints reaching the Interstate Commerce Commission by mail and telegraph from shippers and from individual railways were turned over to the commission on car service for investigation; it was possible to show the Interstate Commerce Commission that many of these complaints were unfounded and that carabuse was in some cases apparent only, and it is gratifying to note that through the activities of the commission on car service there was a marked decrease in the number of such complaints received. The Interstate Commerce Commission was freely furnished with statistics of car location, car accumulations and car interchanges, which were available from special reports made by the carriers to the commission on car service.

In connection with the work of car distribution, representatives of individual carriers appeared on request before the commission on car service, which went over their local situations in detail and impressed upon them the necessity of giving their whole support to the work of redistributing the cars to sections where most needed, regardless of their traffic conditions. It was found necessary in many of these cases to dispose of countless reasons advanced why the desired help could not be extended, and in nearly every instance promises were secured that the individual carrier would give its earnest cooperation. Close attention was given to the situation at large cities where cars had accumulated under load and the formation of local committees was secured to adjust such situations as well as to improve conditions at seaports where a large number of cars were being held.

In the matter of car relocation, the commission on car service faced a very difficult problem. Because of the unusual drift of traffic, as well as the past neglect of the carriers themselves to strictly observe car service rules, the equipment had been badly scattered, the excess of open top equipment being largely in the west and the excess of box car equipment principally in New England and the east. On account of the shortage of coal cars threatening a fuel famine, Commissioner McChord had already notified the roads to return open top cars, and one of the first acts of the commission on car service was to issue its own request to the carriers in confirmation of the notice of the commissioner. Because of threatened serious loss to the fruit industry, the commission on car service issued a similar request to return fruit refrigerator cars to home territory.

The diversion penalty on freight cars was adopted by a large majority vote of members of the American Railway Association, but it was found expedient to postpone its effective date until January 1 so that the commission on car service might have time to comprehensively analyze from current reports the existing situation.

As the commission on car service, in confirmation of the notice of Commissioner McChord, had already requested the return of open top cars to owners and had also made a similar request with respect to refrigerator cars, there were no grounds for further postponing the diversion penalty as to such classes of equipment, and this penalty, by rule of the association, went into effect January 1, 1917. The commission on car service feels that it should materially aid in accomplishing the result desired by the Interstate Commerce Commission in readjusting the open car situation.

In dealing with the box car situation, the commission on car service gave careful consideration to the means that might accomplish the desired result in the shortest space of time. It would have been possible to have issued an order similar to that covering open top and refrigerator cars and require the return of box car equipment to owners, not suspending the diversion penalty as to such equipment. The box car equipment, however, was very widely scattered as to ownership, some lines having as low as one-tenth of home box cars on home rails. Under these conditions the imposition of the diversion penalty would have imposed such a degree of car inefficiency through restricting the available car supply as to seriously increase the existing car shortage. Under such an order also the only equipment which would be available to move to western and southern roads would be their own cars, many of which were tied up under load or were upon the lines of their immediate neighbors in the same territory or upon roads which did not have an excess of box car equipment above ownership. An attempt was, therefore, made to shift box cars in large lots without regard to ownership, first getting the excess of such equipment out of New England territory and requiring lines between Chicago and New York to deliver a specified excess of box cars to western and southern roads. Had the commission on car service received the immediate assistance of every one of these lines, as it had a right to expect, and if these lines had shown a disposition to make some sacrifice of their own interests to help the deficiency roads, many of which were in a really desperate condition, this policy would have resulted at once in a large redistribution of the box car equipment. Some of the roads have cooperated to a large extent, some have done something in the desired direction and some have done very little. The commission on car service can not feel any responsibility for the failure of such roads.

members of the American Railway Association, for not doing their share in meeting the situation with which the railways as a whole are confronted. The undersigned members of the commission on car service feel that in adopting their policy, both as to open top and box car equipment, they were acting in accordance with their best judgment and with the sole desire of securing a readjustment of these cars so that the car owners might receive as promptly as possible the number of cars they normally have on their lines.

Because of complaints which were coming to it, the Interstate Commerce Commission called a formal hearing December 28, at which the roads were required to show cause why certain mandatory orders should not be issued by that body. While differences of opinion were expressed, the railways were practically unanimous in the belief that such an order, carrying with it the statutory fine of \$5,000 for each violation of a specific order of the Interstate Commerce Commission, would be entirely too drastic and would seriously confuse the situation and make a bad matter worse. The opinion of the commission on car service was presented to the Interstate Commerce Commission in part as follows:

"* * * certain salient facts stand out as reasons for expecting the more prompt movement of cars in the future; namely, the increased per diem; progressive demurrage; and diversion penalty, and that by reason of emergency relocations of equipment, certain car service rules have not been made applicable, and that in the judgment of the commission on car service, no code of rules could be prescribed by the interstate Commerce Commission applicable to all of the railroads which would properly improve the immediate situation; that it was the purpose of the American Railway Association through the commission on car service to continue the constant supervision of the car service practices throughout the country, and to develop further experience, devoting itself, specially, at all times to extraordinary effort to relieve conspicuous congestions and shortages which interfere with the largest measure of car efficiency, asking respectfully that the proposed order be held in abeyance by the Interstate Commerce Commission at least until March 1, at which time a report could be made of experience under the new rules and present practices and a foundation laid for more intelligent disposition of the question on a permanent basis."

Following this meeting the commission on car service was instructed by the executive committee to move its headquarters to New York, and at its first meeting at that point was verbally notified by the general secretary that its activities should be suspended until the meeting of the executive committee on January 11.

As to the future work of the commission on car service, whilst there has been improvement in the general car situation, much remains to be done. The undersigned members of the commission on car service strongly urge that accomplishment of effective results in redistributing cars and in eliminating car delay, for which carriers or shippers are responsible, depends entirely upon the railway committee having the confidence and cooperation of the Interstate Commerce Commission, as well as upon the unanimous and united support of every member of the American Railway Association. The Interstate Commerce Commission has already recommended in its annual report the taking over of the regulation of the interchange of cars and two bills have been introduced in Congress for the same purpose. We believe, however, if the Interstate Commerce Commission can be convinced that the railways themselves can successfully cope with any situation that may arise with respect to car shortage or redistribution of cars so that shippers everywhere throughout the country may have equal opportunity in the use of equipment and so that the shippers on a few railways may not receive undue advantage, the American Railway Association will be permitted by the Interstate Commerce Commission to retain control of the situation. It is essential, however, that the Interstate Commerce Commission shall be made to feel that the railway representatives who may be selected to cooperate with it will be clothed with the necessary authority to enforce their acts and that they should be put in a position to reach a prompt and final decision on matters which may be brought up with them from time to time by the Interstate Commerce Commission.

The members of the commission on car service consider it their duty to inform the executive committee that, in their opinion, we are confronting a serious crisis. The transfer of the headquarters of the commission on car service from Washington to New York would undoubtedly have been entirely satisfactory to all members of the commission on car service had the change met with the full acquiescence of Commissioner McChord and the other members of the Interstate Commerce Commission and if Mr. Dow continued to sit with the railway representatives here. From all information it has been possible to gather, the change in location is very unsatisfactory to Commis-

sioner McChord, and there is no hope of either himself or Mr. Dow attending our future sessions. It would be unprecedented for the Interstate Commerce Commission to turn over this duty to some other Commissioner in the hope that he would serve on the committee of railway representatives.

■ The members of the commission on car service feel that the results already accomplished are worthy of the support and commendation of the American Railway Association, but have grave doubts of the efficacy of the future efforts of any railway committee acting independently without the cordial cooperation of the Interstate Commerce Commission. It is not to be expected that that Commission will drop its own investigation, and it is much to be regretted if complaints which will continue to come directly to the Interstate Commerce Commission may be handled by that Commission's inspectors without reference of such matters to the commission on car service. Misunderstandings of conditions, which might otherwise be easily explained, are bound to occur, and the final result of the dissociation may be the issuance of drastic orders that might possibly be prevented through the close association that should exist between the work of the commission on car service and that of the Interstate Commerce Commission with respect to the same subject matter.

W. L. PARK,
E. J. PEARSON,
W. J. WORTHINGTON.

Senator LA FOLLETTE. You understand the usage here in the taking of testimony. You have the opportunity to run over your testimony, and it is customary to supply anything that comes to your mind as important, and to amplify your answers as fully as you are able to do so, to furnish the committee information along the lines upon which the inquiries have proceeded.

Commissioner McCHORD. Yes, sir. I will be very glad to conform to that.

Senator LA FOLLETTE. And I hope you will make your testimony as full as possible on this particular point.

Commissioner McCHORD. I shall be very glad to do so.

Senator LA FOLLETTE. As well as on other points, as they occur to you.

Senator CUMMINS. I assume that the pages of the report to which the Commissioner has just referred and identified will be made part of his testimony.

(The data referred to appear above.)

Senator WATSON. Mr. McChord, the Interstate Commerce Commission was appointed for the purpose of dealing with all the railroad problems, was it not, as far as transportation is concerned?

Commissioner McCHORD. Yes, sir.

Senator WATSON. And as far as dealing with those years with this problem; is that right?

Commissioner McCHORD. Yes, sir.

Senator WATSON. During all this time, since the declaration of war, as well as before, you have been in touch with these various boards having charge of directing the operation of the railroads, as far as you could?

Commissioner McCHORD. You mean the railroad boards?

Senator WATSON. Yes.

Commissioner McCHORD. Some members of the commission have; I have not.

Senator WATSON. Without casting any aspersions upon any man, do you not think that if the dictatorship, or the power to control had

been lodged in your commission that you could have done that as effectively as any man?

Commissioner McCORD. We would have tried mighty hard.

Senator KELLOGG. I just want to ask one more question. Can you give us any idea of the extent of the increase in traffic between 1915 and 1917?

Commissioner McCORD. I can furnish you with that. I understand the only thing we have will be measured by freight revenues.

Senator KELLOGG. It is given here in the answers of the executive officials by ton-miles. They estimate the increase from 1915 to 1917 to be 135,164,000,000 ton-miles.

Commissioner McCORD. Yes, sir.

Senator KELLOGG. Or very nearly 50 per cent. Have you made any calculation to know whether that was accurate or not?

Commissioner McCORD. No, sir. The increase of freight revenue would not bear that out.

Senator KELLOGG. They file with you, do they not, the ton-miles?

Commissioner McCORD. No; we get that at the end of the year. We might take that up with them, Senator. Commissioner Clark can do that.

Senator KELLOGG. I just wanted to know whether that was substantially correct.

Commissioner McCORD. It does not tally with the increase in revenue, I should not think, but it may be so. I shall try to get that for you, and see just where they have it.

(Commissioner McCord was thereupon excused.)

STATEMENT OF HON. EDGAR E. CLARK, COMMISSIONER, INTER-STATE COMMERCE COMMISSION.

Senator CUMMINS. In order to open up the subject, Mr. Commissioner, I will ask you whether you are a member of the Interstate Commerce Commission.

Commissioner CLARK. Yes, sir.

Senator CUMMINS. How long have you been a member of that body?

Commissioner CLARK. Since 1906.

Senator CUMMINS. You are familiar with the organization of the Railway War Board?

Commissioner CLARK. Yes, sir; somewhat.

Senator CUMMINS. You may state in what way the Interstate Commerce Commission was associated with that board.

Commissioner CLARK. The resolution which was read here a while ago—or, rather, a part of which was read—was adopted at a large meeting of railroad presidents that met here in Washington, responsive to an invitation from the Council of National Defense, and was addressed by the Secretary of the Interior. A part of the resolution which was not read recited in substance that all of the railroads represented pledged themselves to the principles of the resolution and to obey the instructions of the executive committee in so far as that committee was authorized by the resolution to act, and the railroads that were not represented were asked to give their assent in writing thereafter, which practically all of them did.

The resolution provided for the appointment of a committee of about 25 members, from which there should be selected an executive committee of 5, which was to remain in Washington, in continuous session if necessary. It recited that Mr. Daniel Willard, who was with the Council of National Defense, should be ex officio a member of the executive committee and that the Interstate Commerce Commission should be invited to designate one of its members to be also ex officio member of that committee. I was designated as such member.

Senator CUMMINS. And did the commission designate one of its members?

Commissioner CLARK. As I say, it designated me.

Senator CUMMINS. Therefore you have been reasonably familiar with what the executive committee of the war board has done, I take it.

Commissioner CLARK. I attended a good many of their meetings in the earlier days of the committee. More recently my other duties have been such as to make it impossible for me to give much time to that.

Senator CUMMINS. Now, bearing in mind the terms of the resolution of April 11, 1917, to which you have referred, I wish you would give the committee as full and comprehensive an idea as possible of what it has done in order to meet the situation with which we have been confronted.

Commissioner CLARK. I think that perhaps I first ought to say, Senator, that my understanding of the resolution and its underlying intent and the understanding which seemed to be unanimously entertained by the executive committee did not extend to any declaration of intent on their part to go beyond those efforts which they could make within the limits of the laws by which they were governed. It was an attempt to get higher efficiency and better utilization out of the available transportation facilities by coordinating their efforts and sinking, so far as they might, lawfully, their competitive individual interests.

Now, those efforts have taken a very wide range. The committee endeavored to increase the movement of freight by many means. They have recommended the elimination of passenger train service which could with propriety be eliminated, suggesting in that same connection that the commissions and other authorities be consulted and the convenience of the public be considered, for the purpose, first, of relieving the tracks of passenger-train units which interfered more or less with the movement of freight, and, secondly, to save fuel and make available the locomotives and men that were thus taken out of the passenger service. They have endeavored to induce heavier loading of cars and more prompt unloading and loading of cars. They have endeavored to utilize the equipment in those ways in which it seemed to be most needed. I remember that soon after the committee was created they considered the question of the necessities for fuel and discussed a good deal at length how much power, if any, they had to direct that any traffic be given preference or priority over any other traffic. They resolved all doubts in favor of the propriety, in view of the exigencies of the situation, of their assuming the right to direct preferential movement for coal. They

did not at that time undertake to restrict it to coal from one place to another place, but it was just a general instruction, giving preference in the furnishing of open-top cars and in the movement of coal from anywhere to anywhere, realizing that the demand exceeded the supply and that in a few months winter would be along, with an increased demand and more difficulties. We felt that it was important that the largest possible amount of fuel should be moved from any producing point to any point where it was wanted. Later they took the same view with regard to the movement of iron ore from the Lake ports to the smelting furnaces in the iron-producing districts.

Somewhat later the question of transportation of fuel coal to the Northwest was brought very forcibly to the front. Ordinarily there is at the opening of navigation on the Great Lakes a surplus of coal; my recollection is approximately 2,000,000 tons on the docks at what we call the head of the Lakes—from which a very large portion of the Northwest is supplied. Last spring, instead of having 2,000,000 tons there, they had about 300,000 tons, so there was a shortage of a million and three-quarters to start with. Authorities of the State of Minnesota, particularly the council of national defense of that State, made several visits to Washington to impress very vigorously upon everybody they came in contact with the importance of transporting the largest possible volume of coal to the head of the Lakes during the season of open navigation. The executive committee decided that in the interest of stimulating that movement and making it as certain as possible it was important that the hopper-bottom cars should be retained so far as reasonably might be in that service. The larger number of those cars are owned by the railways that transport the greater part of this cargo coal, and they asked the Interstate Commerce Commission to sanction tariffs by which the reconsigning privilege on cars of that kind loaded with coal should be confined to their own lines. In other words, that they could not be loaded on their lines and then on reconsignment sent off their own lines. The Commission authorized that change, which was made up until the close of navigation.

They have urged improved operating practices on the various railroads, but in so far as I know, up until they organized an operating committee for the eastern district a few weeks ago the executive committee did not issue any order transferring equipment from one road to another or for one railroad to give the use of any of its facilities to another railroad. In other words, their efforts were in a general and broad direction, and of a broad and general nature up until the formation of this special operating committee for the eastern district. They have had general direction of preparations for the movement of troops required by the Government, and through their car service commission, cooperating with our Commission's car service bureau, have arranged for the transportation of the materials that the Government has required and desired for the construction of cantonments, camps, etc. That, in a general way, has been the plan of their activities.

Senator CUMMINS. Do you know of any instance——

Commissioner CLARK. If you will pardon me, I want to add that they took up vigorously the question of demurrage as an inducement to the prompt unloading of cars, and under suggestions made by that

board, our Commission assenting, the tariffs were changed and higher demurrage charges were imposed in the hope that it would induce more rapid unloading of cars.

Senator POINDEXTER. What effect did it have?

Commissioner CLARK. I think it had a good effect, as far as it had any effect at all.

Senator POINDEXTER. How much increase was made in the demurrage charges, generally?

Commissioner CLARK. Not anybody could tell you the total amount. There is no record from which that could be determined.

Senator CUMMINS. Do you know of any instances in which a railroad company declined to adopt the policy of the executive committee of the railway war board or refused to carry out any of its orders?

Commissioner CLARK. No, sir; I do not.

Senator CUMMINS. If that is so, then why were they not able to meet all the demands of the situation and move the traffic as promptly and efficiently as the conditions demanded?

Commissioner CLARK. I think I can perhaps best answer that question by trying to say what was in my mind when I joined with my colleagues on the Commission in its special report to Congress, and what I had in mind goes back to the early part of 1916.

Then in New England, more particularly on the New Haven road, and in the port of New York and all of the loading and unloading and shipping places, which go to make up the port of New York, there was a congestion of freight which had rendered the operations in those sections almost impossible. We discussed that in conference of the Commission one day, and the suggestion was made that apparently there would be no hope of getting substantially improved conditions until business let up, or until summer weather came, unless some arrangement could be made by which a small committee could be given authority to give instructions, to get at the thing in a vigorous way and do things and not talk about them. Acting upon that suggestion, and by instructions from the Commission, the chairman of the Commission telegraphed to each president of the railroads centering at New York, asking him if he would attend a conference with a member of the Commission at New York on a stated date. They replied that they would. I was sent over there by the Commission, met with these presidents, told them what we had in mind, suggested to them that they arrange for a committee of that kind and give that committee power to give instructions to the several railroads in regard to the placing and removing of their embargoes—everything that moved at all moved under embargoes—and with regard to the movement of empties, to get them out of there. I want to digress to suggest, along the line of some of the inquiry of Saturday, that the normal rule regarding the return of empties is a part of the American Railway Association's voluntarily adopted rules governing the interchange of their equipment with each other. Underlying these rules theoretically is the question of the ownership of the equipment, and when a car goes away from home loaded it is to be loaded to or in the direction of home when a load is available for it, but if it is returned empty it is presumed to return over the same line that moved it loaded. That is all right in normal times, but

in times such as I am speaking of it did not meet the exigencies, because a car might be moving home in the direction of a place where there were plenty of cars and at right angles to a place where there was a great scarcity. It was such a movement of empty cars that our chairman spoke of as superimposed upon the normal movement. It was a movement purely arbitrary. For example, the Pennsylvania Railroad was directed to give so many thousand empty box cars to a connection at a given gateway, at the rate of 500 a day, regardless of marks and regardless of routing, and the intermediate carrier that might have to move those cars to some carrier in a distant section was not compensated under the American Railway Association's rules for hauling diverted empties. Practically 250,000 empty cars were so moved under the direction of this executive committee of which you have been inquiring. Thus they superimposed arbitrarily the movement of cars out of this territory, where they were not needed, and into the territory where they were badly needed for loading.

Senator POINDEXTER. Can you form any idea of what percentage of increased traffic has been handled by the roads, say, since last April?

Commissioner CLARK. I have no figures on that, other than those that have been made up by this executive committee, and I have no reason to doubt that they are substantially accurate. They would probably be subject to some revision at the end of the year, just as the monthly reports of their revenues and expenses are subject to some revision at the end of the year. The monthly reports cover the operations of the month; and I think I can say generally that it develops that, as to some items, certain readjustments or corrections are necessary in the final make-up of the accounts. So, if you take the monthly reports for the 12 months and aggregate the different items and compare them with the same items as shown in their sworn annual reports, they would not exactly match.

Senator WATSON. In that connection, did the order give relief to the congested condition at the port of New York?

Commissioner CLARK. Returning to that, the presidents of these roads assented with a readiness that I really had not anticipated to an arrangement of that sort. The president of the largest system made the remark, "I think it is the thing to do. It has got beyond us." The president of the New York Central system said, "I have often thought I would like to issue an order against the Pennsylvania Railroad, but I have never had that pleasure as yet." But they did appoint such a committee. They asked that I remain there with them, and the Commission had authorized me to say to them that if they did arrange for that kind of an effort to clear up that congestion, and it was thought we could be helpful, I was at their service in that connection.

I stayed there for several weeks. They started in with a committee of 10 or 12, and it soon developed that it was too large, and in a short time it was boiled down to a committee of three. That committee of three sat continuously in session dealing with the situation as it developed from hour to hour and day to day, and in the course of about a month we bored a hole through and got things moving in both directions. There has not been such a serious congestion on the New Haven Road since that time. I think that out of the experience at that time they have handled their embargoes and other operating con-

ditions in such way as to prevent getting so many cars onto the road that they were unable to move them in or out.

Senator WATSON. And the order with respect to the return of the empties, was that carried into effect pretty generally?

Commissioner CLARK. At that time? Oh, yes. The Lackawanna Railroad moved 1,100 empty cars westbound one day in solid trains under our instructions.

Senator WATSON. Regardless of ownership?

Commissioner CLARK. Regardless of ownership and regardless of routing.

Senator POINDEXTER. Did you instruct them where to move them to?

Commissioner CLARK. Yes, sir; they were to get them to Chicago and give them to their western connections. From that day to this the eastern part of what we call the eastern district, I feel quite safe in saying, has never been operated entirely free from embargoes.

Immediately following the outbreak of the European war manufacturing developed and enlarged so rapidly in the eastern section, particularly in New England, that it created demands for fuel and raw materials far exceeding anybody's imagination, and which exceeded the ability of the railroads to satisfy. You understand that if a railroad like the New Haven, which is at the end, issues an embargo, traffic backs up all the way to Chicago and beyond, and the connecting lines hold cars by the thousands that are seeking delivery on the railroad that can not take them. That condition in the eastern district grew rapidly worse in the late summer and early fall of 1916, and has continued up to the present time.

Senator POINDEXTER. Was that due to a volume of traffic greater than the physical capacity of the road, or was it due to inferior management?

Commissioner CLARK. I think the primary reason was the overwhelming volume of traffic. There is probably no industry in which the human element cuts more of a figure than in the operation of a railroad, or any particular part of what goes to make up the operation of a railroad, and if you could imagine two railroads of exactly the same character and equipment, give the same volume of traffic to move under exactly the same circumstances and conditions, you might find that one would do it efficiently and the other would find a great deal of embarrassment, due to variations in the capacities of the human element. What we might call the element of human nature has been touched upon here. I think when a man has spent his whole life in the service of a particular employer, has the element of loyalty in his make-up, has been for many years and is being paid a handsome salary for looking after the interests of that employer, it is hardly to be expected that he can turn around and with entire unselfishness and entire disregard of the interests of his employer cast all that off. But I think that if we could assume the elimination of all selfishness, individual or corporate, a complete unification that would produce the highest degree of efficiency was impossible and is impossible to-day by cooperation of the carriers under existing statutes.

Section 6 of the act to regulate commerce requires carriers to publish and file their schedules of charges, showing the routes to which

they apply, and holds them under the strictest obligation to observe them, and no others.

Section 5, which has been read here this afternoon, prohibits pooling. Section 15 authorizes the shipper to route his freight over any open route preferred by him, or over any particular intermediate carrier that goes to make up that route. The act prohibits the Commission from requiring a carrier to become a part of a through route which embraces substantially less than the entire length of its railroad, or any railroad under a common control or ownership with it, which lies between the termini of the proposed route, unless we can find in what might be termed a quasi judicial proceeding that the route is unreasonably long for the traffic in question, and that another available route which is shorter is the reasonable route to be used.

I have not thought it possible to eliminate all selfishness from human nature. I have not thought that if it could be eliminated it would be possible under existing laws to get that unification which the situation demands. I have thought that as far as is humanly possible the demands of traffic should be met, and, as stated by Mr. Commissioner McChord, I deem it to be a part of our war duty to keep the industries of this country going, as far as it is possible to do so. Complete unification of the railroads, thus producing the highest possible efficiency for existing facilities, was essential, even at the expense of departing from some of the theories which underlie our ideas of regulating railroads in time of peace, and the expenditure of substantial sums of the public's money if that was necessary.

The ACTING CHAIRMAN. Do you think the facilities, the rolling stock, the floor space, and the motive power of the railroads, if properly mobilized, if ideal conditions could exist, could meet the demands of traffic at the present time—I mean adequately meet the demands of traffic?

Commissioner CLARK. If supplemented by one or two other things, which I think are of great importance. The thing I would first direct my attention to—and perhaps that is the most important of all—is the cross hauling of coal. It does not make for the development of the highest possible output of transportation if a railroad in the Middle West comes down into West Virginia to buy its fuel supply, and transports it over practically a continuous bed of coal through Ohio and Indiana and Illinois. Neither does it make for the development of the highest possible output of transportation if a railroad in the East goes into Ohio to buy its fuel supply and transports it clear across the coal fields of western Pennsylvania. If we could eliminate that cross haul and distribute the coal from the producing fields within reasonable zones, assuming that steam coal is steam coal—of course we would have to furnish other coal for gas and other things, but the great bulk of the movement is steam coal—and then pool the coal, not at the point of destination, as was proper in the lake cargo pool, but in distributing coal for domestic use and manufacturing purposes, it seems to me entirely clear that the pool ought to be at the field, so that all the producers in that field will contribute their coal to the pool, and out of that pool the manufacturers and the domestic users in that zone would be supplied.

The ACTING CHAIRMAN. What efforts were made in that direction which you have indicated to have the shortest possible haul from the point of supply to the point of consumption?

Commissioner CLARK. No efforts, except that in the past few weeks the matter has been under consideration, and I am informed that the coal operators have generally assented to it.

Senator CUMMINS. Will you state in that connection what is the proportion of traffic of coal as compared with all other kinds of traffic?

Commissioner CLARK. I do not believe I could offhand. I should want to look up some figures before doing that.

Senator CUMMINS. I am including in that the coal used by the railway companies as well as the coal delivered to other consumers.

The ACTING CHAIRMAN. As I understand it, in your opinion, if arrangements could be made by which the cross hauling of coal could be eliminated, and the car space or transportation facilities available could be put where they would haul from the nearest mine to the nearest point of consumption, it would go largely toward eliminating the present distressing conditions in regard to the supply of coal?

Commissioner CLARK. Supplement that with the utilization of the available tracks in such a way as to route these shipments in the most direct way. When I say the most direct way I do not necessarily mean the shortest distance in miles, because very often you can well afford to haul around a number of miles if you can thereby avoid a congested terminal. If all the restrictions of routing were removed, with the railroads operated as one, I should be surprised if it were not found when the plan was developed and in working condition that the existing car supply and tracks would be found ample. I should expect to see a need for more motive power, because I am afraid that a good deal of the motive power has been run so hard recently that it is getting to a point where much of it must go into the shop.

The ACTING CHAIRMAN. I heard recently a practical railroad man say that they were trying to get 52,000 miles out of one set of flues.

Do you think that the same facts, or your idea as to the mobilization of cars for one service, would apply to a great many of the necessary materials entering into manufacture, and that there are cross hauls in those?

Commissioner CLARK. I have no doubt that there is a good deal of it, and that might be worked out as we go along. But my starting point and glaring example is bituminous coal. The anthracite coal all originates in a comparatively small section anyway.

Senator CUMMINS. I think it developed in a hearing we had that coal made up more than 35 per cent of the entire traffic of the country, and that the railroads used about 55 per cent of that 35 per cent.

Commissioner CLARK. Of course they use enormous quantities of coal. My recollection is that, roughly speaking, about one-half of the tonnage and one-half of the freight revenues of the Pennsylvania Railroad consist of and accrue from transportation of coal. On other roads the percentages are different. The New York Central has a greater proportion of high-class freight, because it does not serve the coal-producing territory that the Pennsylvania Railroad does.

Senator KELLOGG. That crosshaul of coal is due to what causes?

Commissioner CLARK. It is a continuance of competitive commercial situations in the country. Every producer is seeking all the

markets he can find, and every railroad is interested in its own revenues and in giving the widest possible distribution to coal produced along its lines.

Senator KELLOGG. In order to pool the coal, the coal operators and the coal purchasers have been consulted, or else the Fuel Administration has to make an order?

Commissioner CLARK. I do not think the purchasers would have to be consulted; I think the producers would have to be.

Senator KELLOGG. Prior to the law authorizing the Fuel Administration to take charge of it, the only way a pool of coal could be made was to get the operators into an understanding?

Commissioner CLARK. Yes.

Senator KELLOGG. The railroads could not do it alone, nor, perhaps, the operators alone?

Commissioner CLARK. The coal operators are the moving factors. They did it in the lake-cargo pool, and that was followed up by a pool on the North Atlantic coast, called the tidewater pool.

Senator KELLOGG. In the lake-cargo pool, after July, practically all coal that went up to the lakes was pooled and shipped by the steamship companies as it got to the dock?

Commissioner CLARK. No. What they did was this. The lake cargo coal was pooled at the lake ports.

Senator KELLOGG. That is what I mean.

Commissioner CLARK. The railroads transported it to the port designated by the shipper and, instead of the ship waiting for a full cargo that had actually been loaded by a particular operator, it got a cargo of the same grade of coal that was there, and they adjusted their pool by means of bookkeeping accounts. A man got credit for putting in his coal at the point of origin and he got a debit for what he took out.

Senator KELLOGG. There was something said on Saturday about the cause of the congestion east of Chicago, and particularly east of Pittsburgh, being due to the fact that the Government shipments, perhaps including all exports, were mainly made through the port of New York and the port of Newport News, or Norfolk, and that some of those shipments would have to be routed through southern ports or other ports not so congested. What do you know about that?

Commissioner CLARK. That has been obvious for more than a year. The disposition on the part of the trans-Atlantic steamship owners, or those who control them, is to go to the port of New York. They dislike to go to South Atlantic or Gulf ports because of the longer ocean voyage and the increased marine insurance, and so they have insisted on using New York, and that has been true in times of peace as well as in times of war. There is a disinclination on their part to go anywhere else unless there is some way of compensating them, and that is reflected in the fact that many years ago, as the only means of stopping the rate wars between lines serving the different ports, there was a mutually acceptable recognition of the port differentials, under which the rates from Chicago are somewhat less to Philadelphia than to New York and somewhat less to Baltimore than to Philadelphia. The roads leading to Hampton Roads have adopted a policy—they have had it for many years and still maintain

it—that they will so make their rates as to keep the Hampton Roads Harbor on an equality with Baltimore.

Senator KELLOGG. That congestion, owing to the Government shipments, was not anything which the railroads could control, was it?

Commissioner CLARK. The allies controlled the boats and there was a good deal of congestion there for a long time. The situation was badly aggravated by the fact that the shipments had moved to the ports by rail under permits which were confirmed by the steamship management. The freight was there; the boat which had agreed to take it came in under instructions from the British Admiralty to take nothing but some particular cargo. The boat took the horses and left the oats in New York.

Senator KELLOGG. The fact is at the present time the shipments are under the control of the Government?

Commissioner CLARK. Yes. Arrangements have been made by which purchases have been coordinated for the allied Governments; our Government has representatives there, and there is much less difficulty of that sort.

Of course there is some difficulty on the ground of irregularity of ship arrivals. A ship that is expected to take a cargo may never come in, and if she gets the cargo she may never get to the other side. All of those difficulties are present.

This railroad executive committee had taken up recently plans for diverting, as far as they were able to divert or encourage the diversion of, export trade to South Atlantic or Gulf ports, and through their traffic committee they had made arrangements for establishing through rates and joint rates to those ports in the hope of inducing traffic to move that way. But it was not possible to divert any amount of traffic through those ports unless and until the allied Governments and our Shipping Board assented to sending their boats there for the freight.

Senator KELLOGG. Have the railroads been hampered by a shortage of skilled labor owing to the war?

Commissioner CLARK. They say they have been embarrassed considerably, especially in their shops, by the attraction of their men away from them by the inducement of higher wages in other industries. There has been a general shortage of what might be called common labor, and that has contributed its difficulties because in some places they have not been able to keep their men at work in their freight houses. They have had strikes and labor disturbances which have caused temporary congestion.

Senator KELLOGG. In the wintertime a large amount of extra labor is required for keeping the yards and switches clear of snow. Do they find difficulty this winter because of the shortage of labor for that purpose?

Commissioner CLARK. I have not heard of any in that particular connection.

Senator KELLOGG. You think it is impossible for the railroads to have complete unification under the interstate-commerce law and the Sherman Act as it now exists, except by Government operation?

Commissioner CLARK. Yes.

Senator KELLOGG. You assume that the Government in its operation of the roads will pay no attention to those laws?

Commissioner CLARK. I do not say they will not pay any attention to the law, but I assume they will do what is necessary to do and pay the bill.

Senator KELLOGG. That is it. They will assume to direct the operation of the roads and the pooling provisions, the competitive provisions of the existing law?

Commissioner CLARK. I do not understand that anybody knows yet just what the Government is going to do with the money which the railroads will earn or how it is going to distribute the surplus.

Senator KELLOGG. I wish you would formulate some plan and suggest it to this committee.

Senator POINDEXTER. What was the tidewater pool you referred to a few moments ago?

Commissioner CLARK. That was the pooling of coal that goes to tidewater for further movement by water.

Senator POINDEXTER. What section of the country did that cover?

Commissioner CLARK. Newport News, Baltimore, Philadelphia, and New York.

Senator POINDEXTER. That related to soft coal?

Commissioner CLARK. Yes; all bituminous coal.

Senator POINDEXTER. And it involved the Pennsylvania, the Norfolk & Western, and the Baltimore & Ohio Railroads?

Commissioner CLARK. It was the operators who shipped over those roads that pooled the coal, not the railroads.

Senator POINDEXTER. The shipments went over those roads?

Commissioner CLARK. Yes.

Senator POINDEXTER. Do you know or have you investigated the movement of coal from those seaports you have named by water to other Atlantic coast points?

Commissioner CLARK. There is always, in normal times, a heavy movement of that sort. In ordinary times 50 per cent of the coal supply, both anthracite and bituminous, of New England is transported to New England by water from Atlantic ports from New York to and including Norfolk.

Senator POINDEXTER. How about southern ports such as Savannah, Charleston, and Mobile?

Commissioner CLARK. There is no coal worth mentioning taken from the North Atlantic ports to those ports by water. There is a large movement to South America and Central America.

Senator POINDEXTER. Is there coal taken to those ports by rail from the northern mines?

Commissioner CLARK. No; not from what we would term the northern mines. From southeastern Virginia, Tennessee, Kentucky, and Alabama mines there are heavy rail shipments of coal to those ports. There is also by the lines of the Illinois Central and the Mobile & Ohio Railroad a substantial movement from the southern Illinois mines to New Orleans and intermediate points in what is called the Mississippi Valley, which moves in competition with Pennsylvania and Kentucky coal that is barged down the Mississippi River.

Senator POINDEXTER. What has prevented the movement of coal from these mines you speak of in Tennessee and Alabama by water from the southern ports?

Commissioner CLARK. Lack of boats.

Senator POINDEXTER. The same lack applied to the movement of water from Newport News and Baltimore, did it not?

Commissioner CLARK. Yes; and that movement has been much less than normal during the last season. A very large additional tonnage has been thrown into the all-rail movement into New England because the seagoing tugs and other vessels were commandeered by the Government. The water transportation was largely taken away in that way, and so far as what was left was concerned the rate per ton for coal, which two years ago was anywhere from 50 cents to 70 cents a ton from Norfolk to Providence or Boston, went to \$4.50 and \$5 a ton. You could move it by rail for \$2 or \$2.50 a ton.

Senator POINDEXTER. Then it was the shortage of ship tonnage which prevented the movement of coal from those southern mines that I named from ports such as Charleston, Mobile, and Savannah.

Commissioner CLARK. I suppose it is the expense of the movement.

Senator POINDEXTER. Freight rates—higher rates?

Commissioner CLARK. There would be a freight rate to the port, the cost of handling at the port, and then the water haul back again, because it all moved south to get to those ports.

Senator POINDEXTER. But the distance from the mine to the port is no more than from the West Virginia mines to northern ports?

Commissioner CLARK. That is probably so.

Senator POINDEXTER. Then, leaving that subject, a part of the congestion of coal movement is due to the shortage of ship tonnage for close-by movements?

Commissioner CLARK. In part; mainly due to the abnormal demand. There has been more coal produced and more transported by rail during the last year than ever before in the history of this country.

Senator KELLOGG. And there is still a deplorable shortage, although the production, as stated by the Geological Survey, is 49,000,000 tons greater this year than last year.

Commissioner CLARK. The Geological Survey keeps statistics of the production and rail shipments of coal both in tons and in cars. They issue statements of that kind every month which are accepted by the railroads as authentic on that subject.

Senator CUMMINS. I move that the committee adjourn until Wednesday morning at half past 10 o'clock.

(Thereupon, at 4.40 o'clock p. m., the committee adjourned until Wednesday, January 2, 1918, at 10.30 o'clock a. m.)

GOVERNMENT CONTROL AND OPERATION OF RAILROADS.

WEDNESDAY, JANUARY 2, 1918.

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE COMMERCE,
Washington, D. C.

The committee met at 10.30 o'clock a. m., pursuant to call, in the committee room, Capitol, Senator Albert B. Cummins presiding.

STATEMENT OF MR. CLYDE B. AITCHISON, A MEMBER OF THE INTERSTATE COMMERCE COMMISSION.

Senator CUMMINS. Mr. Aitchison, are you a member of the Interstate Commerce Commission?

Commissioner AITCHISON. Yes, sir.

Senator CUMMINS. What position did you hold immediately prior to your appointment as a member of the Interstate Commerce Commission?

Commissioner AITCHISON. I was solicitor of the valuation committee of the National Association of Railway Commissioners, located at Washington. In that capacity I also served as the point of contact between the State commissions and the Railroad War Board, so called, of the carriers.

Senator CUMMINS. And did you hold a position that had something to do with transportation before the one you last spoke of?

Commissioner AITCHISON. Yes, sir. From 1907 until June, 1916, I was a member and twice chairman of the Railroad Commission of Oregon, which was subsequently known as the Public Service Commission of Oregon.

Senator CUMMINS. I refer now to the special report made by the Interstate Commerce Commission to the Congress on the 1st of December, in which, as I understand it, you joined?

Commissioner AITCHISON. I concurred with the majority.

Senator CUMMINS. Will you state in your own way, without being specially interrogated, the reasons which led you to report to the Congress that the railroads as they were then being operated and managed were inadequate to meet the situation which confronted us?

Commissioner AITCHISON. That was the result of general observation and conference with my colleagues. Of course, I can not claim to have a very long intimate insight and acquaintance with the rail situation, for the reason that I became a member of the Interstate Commerce Commission on the 5th of October last. But during the time I have been on the commission the service situation has been a subject of almost daily conference among us.

The conclusion which we all reached was that existing conditions were intolerable and constituted a menace to the public safety.

Senator CUMMINS. What was the difficulty with the existing system? In what respect did it fail to meet the situation?

Commissioner ARCHISON. There was a failure, both qualitatively and quantitatively; that is, there was not enough freight being moved, nor was it being moved with the expedition which was required. I do not think it would be profitable for me to attempt to cover the same ground my colleagues have already covered as to the situation with respect to the congestion. I concur in what was said, particularly by Mr. Commissioner McChord and Mr. Commissioner Clark in that regard. As an operating matter, my observation coincides with theirs, but they did not touch upon the conditions on the Pacific coast, in which I am naturally interested.

Senator TOWNSEND. Why are you more interested in the Pacific coast than any other section of the country?

Commissioner ARCHISON. My home is in Portland, Oreg. Officially I am, of course, interested alike in all sections of the country.

Senator LA FOLLETTE. You are more familiar with it?

Commissioner ARCHISON. I am more familiar with it; and a man naturally takes an interest in what his neighbors are doing and the people on the Pacific coast often come to me with their troubles.

Senator CUMMINS. Do you mean that the difficulty lay in the impossibility of operating all the railroads as a single system or road under the then conditions?

Commissioner ARCHISON. I think so. While I concurred with the majority of the commission in the report to the Congress that there were these two alternatives, I did so because, as a matter of logic, it seemed to me that the first alternative would present itself; but as a practical matter I did not feel that it was tenable, although I did not regard it as incumbent upon me to make a recommendation to the commander in chief as to what he should do.

Senator CUMMINS. I judge from your report that you felt it was necessary to eliminate in some way the individual interests of the several railway companies in traffic.

Commissioner ARCHISON. Yes, sir.

Senator CUMMINS. And let them have simply a common interest in the whole situation.

Commissioner ARCHISON. Yes. Without in the slightest degree criticizing the work which was being done by the executives who constituted the special committee of the Railway Association, it did seem to me that, owing to the inherent obstacles, their resolutions were not being translated into action. I did not see how they could well be, as long as human nature continues as it is.

The basic difficulty which occurred to me when I joined in the report was, as it has been expressed by Mr. Commissioner Clark and Mr. Commissioner McChord, that the operating and traffic men, through long years of experience and training, have gotten to look after their individual roads first, and consequently they are reluctant to direct traffic into new channels for fear that the channels will be scoured so deep that when the present emergency is over the traffic will not return to its former routes.

And, again, I have thought that possibly the resolutions of the Railroad War Board were taken as recommendations by the roads, somewhat in a Pickwickian sense and were not being enforced as orders would be.

Senator CUMMINS. Have you with you a table showing the railway revenue and operating income, the corporate income, for the calendar year 1916?

Commissioner AITCHISON. Yes, sir. This is taken from the proof sheets of a preliminary abstract of the statistics of common carriers for the year ending December 31, 1916, which is published by the Interstate Commerce Commission, and which is now in the Government Printing Office. It is subject to some slight corrections.

Senator CUMMINS. Is that made up in the same way that the tables we have already had before us for other railroads?

Commissioner AITCHISON. Yes, sir.

Senator CUMMINS. Will you hand it to the reporter, making any explanations you care to make in regard to it?

Commissioner AITCHISON. I would ask to be permitted to substitute a photographic copy of this, and in doing so I will eliminate certain portions of the page, which would confuse the record. There is more information here than is contained in the other reports.

Senator KELLOGG. Is this the same thing we have already gotten?

Commissioner AITCHISON. No, sir; this comes down to December 31, 1916, and the figures you have only come down to June 30.

Senator KELLOGG. Why were the other statements made up on the basis of the fiscal year and this one made up on the basis of the calendar year?

Commissioner AITCHISON. Because there was a change in the fiscal year. There are two fiscal years, and there was an overlap of six months. The fiscal year was changed in 1916, to correspond with the calendar year.

Senator KELLOGG. Then the 1917 statement should be made up on a basis of the calendar year?

Commissioner AITCHISON. The 1917 statement will be made up on the basis of the calendar year 1917.

Senator KELLOGG. When will that be done?

Commissioner AITCHISON. The reports come in within 90 days. It takes a little while after the calendar year to close the accounts and make adjustments between the carriers.

Senator KELLOGG. Then we will have the 1915 statement made up on the basis of the fiscal year, the 1916 statement on the basis of the calendar year, and the 1917 statement we will not have at all.

Commissioner AITCHISON. They will be all based on the basis of the old fiscal year as well as the calendar year 1916, and you have certain figures as to 1917, down to June 30, compiled from the monthly reports, but the monthly reports do not contain all the information which goes into the annual report. They do not contain, for instance, the ton-mile figures.

Senator CUMMINS. In order that the record may show it, will you state what the report shows in regard to the several items of revenue, operating income, corporate income?

Commissioner AITCHISON. This is the income account for the year. Railway operating expenses, \$3,596,865,764.

Senator TOWNSEND. Have you photographic copies of this statement?

Commissioner AITCHISON. I have not gotten those copies yet. I will substitute a photographic copy for this copy. All roads are included in this statement.

Senator LA FOLLETTE. When you substitute the photographic copy of that statement, it will bring the statistics down to the last of December, 1917, will it not?

Commissioner AITCHISON. No, sir; 1916.

Senator POINDEXTER. That is printed, is it not?

Commissioner AITCHISON. This is in the Government Printing Office now. The proof was only received at our office a few days ago.

This shows that the railway operating expenses were \$2,357,398,412. Net revenue from railroad operations, \$1,239,467,361; railway tax accruals, \$157,113,372; uncollectible railway revenues, \$797,489; railway operating income, \$1,081,556,499; revenues from miscellaneous operations, \$27,293,345.

Expenses of miscellaneous operations, \$22,902,344; net revenue from miscellaneous operations, \$4,391,002. Taxes on miscellaneous operating property, \$1,351,051; miscellaneous operating income, \$3,039,950. Total operating income, \$1,084,596,450.

Do you wish the detail of the nonoperating income? I can aggregate it, if you desire, or give it separately.

Senator CUMMINS. If it is not long, I think you might give us the details of it.

Commissioner AITCHISON. Hire of freight cars, \$21,000,888; rent from locomotives, \$7,540,675; rent from other equipment, \$13,557,205. Joint facility rent income, \$24,211,967; income from lease of road, \$4,382,393; miscellaneous rent income, \$8,366,485; miscellaneous nonoperating physical property, \$2,955,990. Separately operated properties—profit, \$3,230,513. Dividend income, \$102,494,673.

Income from funded securities, \$50,375,756; income from unfunded securities, \$26,858,938. All other nonoperating income, \$5,472,897. Total nonoperating income, \$270,448,328. Gross income, \$1,355,044,831.

Hire of freight cars—debit balance, \$43,622,846; rent for locomotives, \$6,644,419; rent for other equipment, \$15,563,283; joint facility rents, \$41,916,684; rents for leased lines, \$158,332,347; miscellaneous rents, \$5,583,411.

Miscellaneous tax accruals, \$2,282,481; separately operated properties—loss, \$3,451,928.

Interest on funded debt, \$405,822,451; interest on unfunded debt, \$15,212,296. All other income deductions, \$10,766,436. Total deductions from gross income, \$709,198,583. Net income, \$645,846,244.

(The table referred to is as follows:)

Summary of income account, profit and loss account, operating revenues, operating expenses, and certain statistics of rail-line operations of steam roads for the year ended December 31, 1916.

No.	Item.	Total, all districts.	Eastern district.	Southern district.	Western district.
1	Average number of miles of road operated, 1916.....	231,003.59	59,081.67	42,711.46	129,210.46
2	Number of miles of road owned on Dec. 31, 1916.....	178,163.29	35,822.44	34,551.91	107,788.94
INCOME ACCOUNT FOR THE YEAR.					
26	Railway operating revenues.....	\$3,596,865,764	\$1,621,550,880	\$523,035,793	\$1,452,279,141
27	Railway operating expenses.....	2,357,398,412	1,102,248,863	340,077,503	915,072,046
28	Net revenue from railway operations.....	1,239,467,361	519,301,999	182,958,291	537,207,101
29	Railway tax accruals.....	157,113,372	62,847,784	22,402,807	71,862,781
30	Uncollectible railway revenues.....	797,489	255,635	161,530	380,324
31	Railway operating income.....	1,081,556,499	456,198,549	160,393,956	464,963,994
32	Revenues from miscellaneous operations.....	27,263,345	26,681,453	272,721	339,172
33	Expenses of miscellaneous operations.....	22,902,344	22,593,260	87,721	221,363
34	Net revenue from miscellaneous operations.....	4,361,002	4,088,193	185,000	117,810
35	Taxes on miscellaneous operating property.....	1,351,051	1,177,685	12,000	161,366
36	Miscellaneous operating income.....	3,009,950	2,910,506	173,000	45,444
37	Total operating income.....	1,084,566,450	459,109,055	160,566,957	464,920,438
38	Hire of freight cars—credit balance...	21,000,888	6,349,612	9,776,126	4,875,150
39	Rent from locomotives.....	7,540,675	3,019,083	863,242	3,658,350
40	Rent from other equipment.....	13,567,205	6,419,036	1,825,422	5,318,747
41	Joint facility rent income.....	24,211,987	11,021,706	3,154,719	10,035,562
42	Income from lease of road.....	4,332,383	2,688,760	433,306	1,300,327
43	Miscellaneous rent income.....	8,366,485	5,024,099	856,887	2,485,499
44	Miscellaneous nonoperating physical property.....	2,955,990	1,378,015	493,852	1,084,123
45	Separately operated properties—profit.....	3,230,513	2,681,261	818,749	230,503
46	Dividend income.....	102,494,673	48,786,600	8,955,825	44,749,248
47	Income from funded securities.....	50,375,756	8,045,631	9,751,147	32,580,978
48	Income from unfunded securities and accounts.....	26,858,988	12,199,373	3,453,205	11,206,360
49	All other nonoperating income.....	5,472,897	3,673,067	687,006	1,112,824
50	Total nonoperating income.....	270,448,378	111,180,245	40,569,485	118,698,648
51	Gross income.....	1,355,014,831	570,289,303	201,136,439	583,619,086
52	Hire of freight cars—debit balance...	43,622,846	33,732,102	1,578,927	8,311,817
53	Rent for locomotives.....	6,644,419	3,233,111	406,323	2,005,985
54	Rent for other equipment.....	15,563,283	9,419,871	1,541,470	4,601,942
55	Joint facility rents.....	41,916,684	19,812,086	5,220,707	16,883,941
56	Rent for leased roads.....	158,332,347	76,506,292	11,342,521	70,437,534
57	Miscellaneous rents.....	5,583,411	3,632,126	363,778	1,287,597
58	Miscellaneous tax accruals.....	2,282,481	853,682	211,844	1,216,705
59	Separately operated properties—loss.....	3,451,928	2,208,613	722,740	520,575
60	Interest on funded debt.....	405,822,451	145,154,710	69,357,643	191,310,098
61	Interest on unfunded debt.....	15,212,296	10,178,348	1,094,342	3,939,606
62	All other income deductions.....	10,766,436	5,891,162	672,453	4,202,821
63	Total deductions from gross income.....	709,198,583	310,922,306	92,511,749	305,764,528
64	Net income.....	645,846,244	259,366,996	108,624,690	277,854,558
65	Income applied to sinking and other reserve funds.....	14,806,353	10,223,776	369,952	4,212,625
66	Dividend appropriations of income.....	188,029,551	82,240,645	2,584,708	102,903,901
67	Income appropriated for investment in physical property.....	62,510,058	27,553,898	2,135,976	32,820,184
68	Stock discount extinguished through income.....				
69	Miscellaneous appropriations of income.....	20,315,069	8,007,255	51,906	12,256,538
70	Total appropriations of income.....	285,661,662	128,025,572	5,442,542	152,193,248

Summary of income account, profit and loss account, etc.—Continued.

No.	Item.	Total, all districts.	Eastern district.	Southern district.	Western district.
71	Income balance transferred to profit and loss.....	\$360,184,581	\$131,341,127	\$103,182,149	\$125,661,305
	PROFIT AND LOSS ACCOUNT.				
72	Credit balance transferred from income	301,620,843	132,293,695	103,665,843	125,661,305
73	Profit on road and equipment sold...	3,028,634	783,740	263,444	1,981,411
74	Delayed income credits.....	2,062,077	1,394,307	8,797	648,973
75	Unrefundable overcharges.....	917,550	457,302	86,309	373,948
76	Donations.....	1,355,004	328,490	374,765	651,749
77	Miscellaneous credits.....	30,950,535	11,908,312	6,317,393	12,643,830
78	Total credits during year.....	399,933,652	147,255,855	110,716,551	141,961,246

Senator CUMMINS. Will you state again—I think it has been stated once or twice but to make it perfectly clear, state again what the phrase “Net income” means, according to the bookkeeping prescribed by the Interstate Commerce Commission?

Commissioner AITCHISON. From the railway operating revenues will be deducted the railway operating expenses, leaving the net revenue from railway operations. Then railway tax accruals and the railway uncollectible revenues are deducted from the net revenue from railway operations, leaving the item termed railway operating income. To that item is added or subtracted, as the case may be, the net revenue from miscellaneous operations, and deducted therefrom will be the taxes on miscellaneous operating property, leaving the total operating income.

Then the items of nonoperating income are added to the total operating income, which gives the gross income of the corporation. Deducted from the gross income are items such as interest on funded and unfunded debts, rent of equipment, rent of leased roads, and certain other items, which we denominate total deductions from gross income, and the remainder is called net income.

Senator KELLOGG. What is the amount of that?

Commissioner AITCHISON. The amount of that is \$645,846,244.

Senator CUMMINS. Treating the railways as a whole, that is the sum which, at the end of the year 1916, the railways had for the payment of dividends, or the establishment of sinking funds, or for the betterment of their properties, or for whatsoever purpose they saw fit to use it?

Commissioner AITCHISON. Yes, sir; after the payment of their funded and unfunded interest and taxes.

Senator POINDEXTER. To what extent, if any, did the purchase of new cars and locomotives enter into that calculation? Was that counted in as part of the operating expenses in any degree?

Commissioner AITCHISON. Only, as I understand it, to the extent of the cost of the original equipment, which was replaced as it was worn out or scrapped; that was included. The remainder goes to the investment account. There are some cases where that is in property as, for instance, in the case of ties, the added cost of a new tie and the added cost of a yard of ballast, as it originally went in is figured as operating expense. That, of course, is only a small part. Ordi-

narily the added amount of investment would not appear in the operating expense.

Senator POINDEXTER. The maintenance of the number of locomotives and the number of cars previously owned by the road would be considered a part of the operating expense?

Commissioner AITCHISON. Yes, sir; that is right.

Senator POINDEXTER. I do not mean merely the repair of old cars and old locomotives, but the acquisition of a number sufficient to keep up the number previously owned either by repair or purchase.

Commissioner AITCHISON. To keep the investment intact, but not adding to it.

Senator CUMMINS. Why is it, Commissioner Aitchison, that the figures for 1917 are not available for the calendar year 1917?

Commissioner AITCHISON. One reason is that this is only January 2, and it has not been physically possible to assemble the figures, and secondly, I understand that, by law, the reports of the carriers are not yet due.

Senator CUMMINS. The railway companies make a monthly report, do they not?

Commissioner AITCHISON. Yes, sir.

Senator CUMMINS. To the Interstate Commerce Commission?

Commissioner AITCHISON. Yes, sir.

Senator CUMMINS. What is the difference between the monthly report and the annual report, which is not due for three months to come?

Commissioner AITCHISON. The monthly report for December is not yet due, I can explain, and will not normally come in for some weeks yet. It takes time to close the books and to make interline adjustments. But the monthly reports do not call for the traffic statistics, such as ton-miles, etc.

Senator CUMMINS. I think we have a form of the monthly report in the record already.

Commissioner AITCHISON. I think that is the one I brought up, and I have not got it here now before me; but the monthly report form is a single sheet, and is always subject to corrections.

Senator CUMMINS. How late in the year 1917 can you bring down the compilation of these statistics that will enable us to know how much the companies earned during the present year, or for the part of the present year for which you have reports?

Commissioner AITCHISON. I happen to have before me a compilation from the monthly reports of revenues and expenses of steam roads which have operating revenues above \$1,000,000 a year, and that comes down to the end of September.

Senator CUMMINS. That comes down to what date, did you say?

Commissioner AITCHISON. To the end of September.

Senator CUMMINS. Does that compilation show the aggregate operating income? I do not mean revenue; I mean income.

Commissioner AITCHISON. It shows railroad operating income for the railroads having revenues of more than \$1,000,000 annually.

Senator CUMMINS. How much is it?

Commissioner AITCHISON. For the nine months ending September 30, 1917, the railway operating income was \$735,688,542. For the corresponding nine months of the year 1916 I can give you the figures, if you desire them.

Senator CUMMINS. From the sum you have just named there has not been deducted the dividend payments?

Commissioner AITCHISON. Nor the interest.

Senator CUMMINS. I mean the interest payments.

Commissioner AITCHISON. No, sir; the interest payments have not been deducted.

Senator CUMMINS. Have the tax accruals been deducted?

Commissioner AITCHISON. Yes, sir; and I may say that the tax accruals which have been deducted included the estimated amounts on account of the war tax as well as the normal corporate tax.

Senator CUMMINS. Will you state again the comparative figures for this year and last year—I mean 1917?

Commissioner AITCHISON. The figures for the nine months ended September 30, 1917, I gave as \$785,688,542. The operating income for the same nine months in the year 1916 was \$785,897,811.

Senator CUMMINS. Do you know of any reason that would disturb that general comparison if it were carried down to the end of the year 1917? In other words, can we accept with reasonable safety those figures as indicating what the corporate income will be for 1917?

Commissioner AITCHISON. Certain qualifications must be borne in mind. You have to know the history of the year. You are, in effect, asking me to decide the 15 per cent case now pending before us. The early part of the calendar year 1917, as shown by the commission's report in June, 1917, on the 15 per cent case, indicated that there was a marked falling off in the railway operating income.

As stated by the commission in that case, the months which followed March, and up to the time of the commission's decision, indicated an improvement. About the middle of the year the increase which the commission had permitted to become effective in Central Freight Association territory went in. The general testimony before us in the advanced rate case indicates rising operating costs during this period, which, I think it is fair to say it was conceded, seemed to be somewhat halted, with the exception of possible future wage increases.

The price of fuel had been fixed, but it had also been fixed at a price which exceeded the contracts which many of the carriers had, and which were continuing in effect. Many of the carriers in the operating figures early in the year were carrying into their operating accounts material which had been purchased at a time of lower costs, and consequently felt that they could not continue those costs in the future, and that immediately they might begin to feel the effects of increasing costs in that regard.

The traffic has been increasing all the time until, as I stated before, the physical capacity seemed to be reached. So that all these complex factors must be taken into account.

I do not believe I mentioned the increase in the class rates and in the rates on coal and iron ore generally, the increase in class rates being confined to what we call eastern territory, which became effective about the 1st of August.

Senator CUMMINS. With the facts you have before you, with the basis you have laid, will you state to the committee whether, in your opinion, the amount available for dividends for the year 1917 will be less or more than the amount available for dividends in the year 1916?

Commissioner **ATTCHISON**. I think it will be somewhat less.

Senator **CUMMINS**. Will you give the committee your best judgment as to the amount that it will be less than the similar income for 1916?

Commissioner **ATTCHISON**. I think I should state one item which I overlooked, and that is the claim of certain eastern carriers that their railway operating income is, to a certain extent, overstated by reason of the fact that they have not kept their operating properties at the stage of maintenance which they normally have done, and that had they done so, had they not permitted deferred maintenance to accrue, that their maintenance of way and structures accounts would be in excess of what it is, and that that maintenance must be met later.

Now, Senator **Cummins**, answering your question, my best judgment is that in the eastern territory there will not be the amount available for dividends which was available last year. Seemingly that is not so with respect to western and southern territory.

Senator **CUMMINS**. Will you give us your best judgment as to the amount which this income available for dividends will be less than it was in 1916?

Commissioner **ATTCHISON**. The table which I have before me shows that for the nine months of 1917 which I referred to the eastern carriers have approximately \$56,000,000 less railway operating incomes than they had last year, the southern carriers approximately \$2,000,000 more, and the western carriers approximately \$3,000,000 more, so that if that condition continues during the remainder of the year, the carriers in eastern territory would be over \$50,000,000 or \$60,000,000 short of having the amount of railway operating incomes which they had in the last calendar year, 1916, while the southern and western carriers will have approximately the same.

Senator **KELLOGG**. They are already short \$50,000,000, according to your figures, are they?

Commissioner **ATTCHISON**. Yes, sir.

Senator **KELLOGG**. Then, you mean if they maintain the balance during the last three months they will remain \$50,000,000 short?

Commissioner **ATTCHISON**. I say, bearing in mind that they had increased traffic, which they did not have prior to that, and also bearing in mind that the rate increase did not apply in the early part of the year. These roads we are talking about represent about 97 per cent of the whole railroad revenue of the country and about 95 per cent of the total mileage, and of course we get up tables of this sort which involve comparatively few roads much quicker than tables taking in 1,800 carriers.

Senator **CUMMINS**. From your standpoint, then, it would be safe to proceed upon the hypothesis, as far as it is material, that the free money or the money available for dividends for the calendar year 1917 would be \$50,000,000 or \$60,000,000 less than the amount available for 1916?

Commissioner **ATTCHISON**. Yes; bearing in mind all the time the contentions of the carriers as to the deferred maintenance and the like which I have enumerated.

Senator **KELLOGG**. Do you know anything about that?

Commissioner AITCHISON. I have heard testimony given before me in the advanced rate cases, I think, as far as the eastern carriers are concerned. Mr. Willard testified he thought you would get as safe a ride between Washington and Chicago as you ever had on the Baltimore & Ohio, but possibly you would not get as smooth a one.

Senator POINDEXTER. What is the difference in the taxes of the railroads in this class in the year 1916 and 1917?

Commissioner AITCHISON. In 1917, for the nine months referred to, the amount was \$151,557,095. For 1916, during the same nine months, the amount was \$116,527,940, a difference of approximately \$35,000,000, or about 30 per cent of the 1916 taxes.

Senator POINDEXTER. That would make up over one-half of the difference available for dividends?

Commissioner AITCHISON. Seemingly.

Senator POINDEXTER. It would make up over half the difference you have spoken of?

Commissioner AITCHISON. Seemingly. I understand the practice of the carriers has not been uniform with respect to charging to the railroad tax accruals the excess-profits tax. Some of them have done that and some of them have not.

Senator CUMMINS. In your opinion, is the diminished income of roads in the eastern district for these nine months due to lesser traffic or increased cost of maintenance and operation, or to the confusion arising out of the priority orders in the movement of traffic?

Commissioner AITCHISON. During this nine months period I think they have had more traffic than during the same period in 1916. They have been suffering from an embarrassment caused by too much traffic, but the confusion with respect to priority orders does not cover the whole period, because we did not get into the war until April.

Senator CUMMINS. Then it is due somewhat to the increased cost of maintenance and operation? You have accounted for about \$30,000,000 in taxes.

Commissioner AITCHISON. The maintenance of way and structures accounts of 1917 exceeds that of 1916 by upward of \$20,000,000, and of course they say, with a good deal of justification, that a dollar will not buy as much now as it did in 1916 in the shape of work performed.

There is a very heavy increase in the maintenance of equipment, which is due both to increased cost of material and labor and also to the increase in traffic.

Senator LA FOLLETTE. The table you have before you is based upon monthly reports, is it not?

Commissioner AITCHISON. Yes, sir.

Senator LA FOLLETTE. Do the monthly reports as shown there indicate that this shrinkage extended over the entire nine months period or when did it begin, if you can tell by reference to that table? When did it begin to indicate itself?

Commissioner AITCHISON. The table I was using does not show that, but I can get it from other tables.

Senator CUMMINS. Will you give that table to the reporter, so that it may be incorporated in the record?

Commissioner AITCHISON. I will do that, if the committee desires it.

GOVERNMENT CONTROL AND OPERATION OF RAILROADS. 141

(The table referred to is as follows:)

Summary of monthly reports of Class I, railroads, January to September, inclusive, 1917.

[Comparison is between totals for months named, with totals for same months in 1916.]

UNITED STATES.

Item.	Amount.		Per mile of road operated.	
	1917	1916	1917	1916
Average number miles operated.....	231,120.44	230,496.01	.....	.....
Revenues:				
Freight.....	\$2,085,541,904	\$1,878,079,037	\$9,024	\$8,148
Passenger.....	597,833,714	522,591,404	2,587	2,267
Mail.....	45,074,080	45,395,420	195	197
Express.....	78,400,879	65,112,272	339	282
All other transportation.....	84,312,690	78,372,177	365	340
Incidental.....	76,631,345	61,473,766	331	267
Joint facility—Cr.....	3,137,108	2,804,769	13	12
Joint facility—Dr.....	1,162,060	1,083,007	5	4
Railway operating revenues.....	2,969,769,680	2,652,795,828	12,849	11,509
Expenses:				
Maintenance of way and structures.....	342,060,011	321,149,529	1,480	1,393
Maintenance of equipment.....	500,594,696	442,918,797	2,166	1,921
Traffic.....	48,480,181	46,745,834	210	203
Transportation.....	1,100,512,711	861,761,267	4,761	3,740
Miscellaneous operations.....	24,968,111	20,140,541	108	87
General.....	71,124,116	62,249,302	308	270
Transportation for investment—Cr.....	5,675,449	5,290,727	25	23
Railway operating expenses.....	2,062,064,377	1,749,674,543	9,008	7,591
Net revenue from railway operations.....	887,705,303	903,121,285	3,841	3,918
Railway tax accruals.....	151,557,095	116,527,940	656	505
Uncollectible railway revenues.....	459,666	695,534	2	3
Railway operating income.....	735,688,542	785,897,811	3,183	3,410
Ratio of operating expenses to operating revenues, per cent.....	70.11	65.96	.....	.....

EASTERN DISTRICT.

Average number miles operated.....	59,200.26	59,214.87	.....	.....
Revenues:				
Freight.....	\$932,263,753	\$855,671,392	\$15,748	\$14,480
Passenger.....	264,526,804	236,935,095	4,468	4,001
Mail.....	17,757,339	16,808,070	300	284
Express.....	37,112,946	31,206,471	627	527
All other transportation.....	46,660,700	44,207,290	788	747
Incidental.....	42,554,712	34,018,706	719	575
Joint facility—Cr.....	1,515,947	1,315,489	26	22
Joint facility—Dr.....	694,817	573,520	12	10
Railway operating revenues.....	1,341,697,384	1,219,583,993	22,664	20,596
Expenses:				
Maintenance of way and structures.....	143,686,087	134,082,294	2,427	2,264
Maintenance of equipment.....	240,239,241	213,503,761	4,058	3,606
Traffic.....	18,764,873	17,879,353	317	302
Transportation.....	646,535,875	421,323,356	9,232	7,115
Miscellaneous operations.....	11,517,167	9,482,718	195	160
General.....	31,265,801	27,407,758	528	463
Transportation for investment—Cr.....	577,580	680,546	10	11
Railway operating expenses.....	991,431,464	823,028,692	16,747	13,899
Net revenue from railway operations.....	350,265,920	396,555,301	5,917	6,697
Railway tax accruals.....	56,515,550	47,226,420	955	797
Uncollectible railway revenues.....	152,217	283,149	3	5
Railway operating income.....	293,598,153	349,045,732	4,969	5,895
Ratio of operating expenses to operating revenues, per cent.....	73.89	67.48

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Summary of monthly reports of Class I, railroads, etc.—Continued.

SOUTHERN DISTRICT.

Item.	Amount.		Per mile of road operated.	
	1917	1916	1917	1916
Average number miles operated.....	42,774.83	42,581.88	.....	.....
Revenues:				
Freight.....	\$319,716,721	\$280,092,828	\$7,474	\$6,578
Passenger.....	87,837,792	71,171,772	2,054	1,671
Mail.....	6,890,186	6,080,864	161	142
Express.....	10,811,523	9,458,237	253	222
All other transportation.....	6,375,203	5,887,765	149	138
Incidental.....	8,432,984	7,073,314	197	166
Joint facility—Cr.....	784,173	657,730	17	15
Joint facility—Dr.....	196,934	215,678	5	5
Railway operating revenues.....	440,571,650	383,156,832	10,300	8,927
Expenses:				
Maintenance of way and structures.....	52,168,440	47,330,622	1,230	1,113
Maintenance of equipment.....	83,837,653	70,383,363	1,890	1,653
Traffic.....	9,059,892	8,660,616	212	203
Transportation.....	147,352,913	114,053,267	3,445	2,678
Miscellaneous operations.....	2,416,711	1,973,058	56	46
General.....	10,550,886	9,763,923	247	229
Transportation for investment—Cr.....	1,010,215	873,221	24	20
Railway operating expenses.....	301,376,280	251,291,628	7,046	5,901
Net revenue from railway operations.....	139,195,370	128,865,204	3,254	3,026
Railway tax accruals.....	24,646,490	16,401,065	576	385
Uncollectible railway revenues.....	83,375	126,995	2	3
Railway operating income.....	114,459,505	112,334,144	2,676	2,638
Ratio of operating expenses to operating revenues, per cent.....	68.41	66.10	.....	.....

WESTERN DISTRICT.

Average number miles operated.....	129,145.35	128,699.26	.....	.....
Revenues:				
Freight.....	\$833,561,430	\$742,314,817	\$6,454	\$5,768
Passenger.....	245,469,118	214,484,537	1,901	1,667
Mail.....	20,456,663	22,561,486	158	175
Express.....	30,476,410	24,447,564	236	190
All other transportation.....	31,276,787	28,277,122	242	220
Incidental.....	25,643,649	20,381,746	199	158
Joint facility—Cr.....	886,988	831,540	7	6
Joint facility—Dr.....	270,299	243,809	2	2
Railway operating revenues.....	1,187,500,646	1,053,055,003	9,195	8,182
Expenses:				
Maintenance of way and structures.....	146,205,484	139,736,613	1,132	1,086
Maintenance of equipment.....	179,517,802	159,031,673	1,390	1,235
Traffic.....	20,655,416	20,205,865	160	157
Transportation.....	406,623,923	326,384,644	3,149	2,536
Miscellaneous.....	11,034,233	8,684,767	85	67
General.....	29,307,429	25,077,621	227	196
Transportation for investment—Cr.....	4,087,654	3,766,960	32	29
Railway operating expenses.....	789,256,633	675,354,223	6,111	5,247
Net revenue from railway operations.....	398,244,013	377,700,780	3,084	2,935
Railway tax accruals.....	70,395,055	52,900,455	545	411
Uncollectible railway revenues.....	218,074	282,390	2	2
Railway operating income.....	327,630,884	324,517,935	2,537	2,522
Ratio of operating expenses to operating revenues, percent.....	66.46	64.13	.....	.....

The shrinkage for the carriers of the United States as a whole commences with the month of July, 1917. I am speaking of the shrinkage in the operating income.

Senator LA FOLLETTE. But there has been no shrinkage as a whole in either the southern or the western territory. This shrinkage, as you have already testified, is confined to eastern territory.

Commissioner ATTCHISON. Perhaps I can answer that more accurately by reading the average operating income per mile of the carriers in the southern and western districts for the nine months mentioned. It shows certain minor fluctuations, which make a categorical answer somewhat misleading.

Senator POINDEXTER. Can you give us, before reading that table, the increase in the income of the western and southern roads for the nine months of 1917 over the corresponding nine months of 1916?

Commissioner ATTCHISON. Yes, sir. For the southern carriers, the railway operating income in 1917 for the nine months mentioned was \$114,459,505, or \$2,676 per mile of road operated. For the same nine months in 1916 the amount was \$112,334,144, or \$2,636 per mile of road operated, a difference of \$38 per mile of road operated in southern territory, an increase of the railway operating income over 1916 for those nine months.

In the western district the railway operating income for the nine months previously mentioned amounted to \$327,630,884 for 1917, and for 1916, during the same period, the amount was \$324,517,935. Reduced to the basis per mile of road operated, the 1917 railway operating income was \$2,587 per mile of road operated, and in 1916 the income was \$2,522 per mile of road operated, or an increase in 1917 over 1916 of \$15 per mile of road operated.

Senator POINDEXTER. Now, with reference to the eastern roads, reduced to the amount per mile of road operated, what was the loss for that period?

Commissioner ATTCHISON. In 1916 the railway operating income for the nine months mentioned for class 1 carriers was \$5,895 per mile of road operated, and in 1917, during the same period, the amount was \$4,959 per mile of road operated, a decrease of \$936 per mile of road operated.

Senator WATSON. When was the priorities board formed, and when did Judge Lovett begin to issue priority orders, do you remember?

Commissioner ATTCHISON. You will have to ask somebody else that question, Senator. I do not remember that.

Senator TOWNSEND. There was a priorities board in existence before Judge Lovett took charge. He had to change a good many of the priority orders. He has only been there a couple of months, I think.

Senator WATSON. I was wondering how nearly coincident the operations of the Priorities Board and the decrease in the revenues of the eastern roads might be.

Commissioner CLARK. The criticism that has been made in reference to the so-called priority orders does not refer to the orders issued by the priorities director, Judge Lovett, but to preference instructions that have been issued by various bureaus in the same department and by various departments of the Government.

Senator WATSON. I referred to him as the head of that board, and was not criticizing him.

Commissioner CLARK. That is the point I was trying to clear up, that these preference instructions issued from the various bureaus in the various departments have been issued independent of any action of or consultation with Judge Lovett.

Senator WATSON. That is in the War Department, or other departments?

Commissioner CLARK. Yes. I heard Judge Lovett say in a meeting a month ago that he had taken that matter up with the Secretary of War, the idea of coordinating the needs of the various bureaus in the various departments, so that there will be less confusion or conflict of orders.

Commissioner AITCHISON. It has been Judge Lovett's policy, as I understand, from my own observation, and from conversations with him, to keep the number of priority orders he issues down to an absolute minimum.

Senator WATSON. When was this Railway Managers' Board or committee, as it was recently constituted, organized?

Commissioner AITCHISON. In April, 1917.

Senator WATSON. The amount of freight handled after that board was organized and took alleged charge greatly increased, did it not?

Commissioner AITCHISON. Undoubtedly.

Senator WATSON. Do you know how much?

Commissioner AITCHISON. Except as it reflects itself in revenue.

Senator WATSON. After that this decrease in earnings continued?

Commissioner AITCHISON. Yes, sir.

Senator WATSON. After they had taken charge. That is, with greatly increased freightage?

Commissioner AITCHISON. It started somewhat after that. Comparing the operating income per mile, month by month for the country as a whole, October, 1916, was the high peak; then there was a decline to February, 1917, which was the lowest point since February, 1915. Then there was an increase to July, 1917, followed by fluctuations down and up with a general downward tendency to September, 1917, which concludes the table before me. For the eastern carriers, August, 1916, was the highest peak month as to operating income per mile shown on the table; then the tendency was markedly downwards to February, 1917, the lowest point shown on the table as to eastern carriers; and then there was a uniform increase to and including August, 1917. The drop in operating income of the eastern carriers did not commence again until September, 1917.

Senator WATSON. So that the increased amount of freight handled did not increase the net revenues?

Commissioner AITCHISON. That is a question which we are thrashing out in the 15 per cent rate case, how far the law of increasing returns operates or does not operate. I can submit the following statement showing the railway operating revenues and operating income per mile, by months and districts, of the Class I carriers, from January, 1915, to September, 1917, inclusive. This will show the fluctuations in operating revenues and operating incomes, month by month, for the country as a whole, and for the three districts.

UNITED STATES.

Months.	Average operating revenues per mile.			Average operating income per mile.		
	1917	1916	1915	1917	1916	1915
January.....	\$1,301	\$1,133	\$939	\$311	\$281	\$172
February.....	1,147	1,141	900	188	286	171
March.....	1,373	1,260	1,015	319	361	244
April.....	1,383	1,221	1,013	332	342	240
May.....	1,496	1,307	1,044	399	395	259
June.....	1,514	1,302	1,094	422	392	311
July.....	1,507	1,315	1,130	408	411	329
August.....	1,581	1,418	1,190	441	476	378
September.....	1,547	1,409	1,251	385	468	425
October.....	.....	1,466	1,321	.....	495	455
November.....	.....	1,396	1,303	.....	441	449
December.....	.....	1,345	1,253	.....	375	397
12 months to end of September.....	17,058	15,387	.....	4,516	4,713	.....

EASTERN DISTRICT.

January.....	\$2,245	\$2,073	\$1,591	\$434	\$520	\$227
February.....	1,961	2,041	1,506	176	489	227
March.....	2,426	2,219	1,712	460	578	372
April.....	2,424	2,195	1,814	512	601	447
May.....	2,639	2,370	1,873	628	721	483
June.....	2,699	2,363	1,973	689	699	500
July.....	2,715	2,380	2,011	695	741	613
August.....	2,837	2,504	2,120	749	807	691
September.....	2,726	2,451	2,185	644	745	740
October.....	.....	2,482	2,296	.....	726	760
November.....	.....	2,353	2,212	.....	623	721
December.....	.....	2,257	2,175	.....	532	635
12 months to end of September.....	29,764	27,299	.....	6,868	8,007	.....

SOUTHERN DISTRICT.

January.....	\$1,111	\$956	\$796	\$335	\$273	\$168
February.....	1,012	967	764	269	285	156
March.....	1,145	1,050	867	328	328	221
April.....	1,120	987	850	290	295	211
May.....	1,178	1,024	833	311	317	202
June.....	1,153	965	817	295	294	189
July.....	1,156	931	842	273	240	202
August.....	1,221	1,028	874	307	309	227
September.....	1,207	1,028	925	303	307	268
October.....	.....	1,116	980	.....	371	292
November.....	.....	1,113	981	.....	374	299
December.....	.....	1,129	1,012	.....	386	330
12 months to end of September.....	13,661	11,912	.....	3,842	3,569	.....

WESTERN DISTRICT.

January.....	\$930	\$759	\$684	\$247	\$174	\$148
February.....	818	783	663	167	193	150
March.....	964	888	728	251	272	192
April.....	993	855	697	265	238	154
May.....	1,079	912	730	323	272	174
June.....	1,090	924	780	342	282	223
July.....	1,071	951	819	322	316	241
August.....	1,126	1,047	866	345	380	278
September.....	1,123	1,057	929	294	394	332
October.....	.....	1,116	983	.....	430	369
November.....	.....	1,050	980	.....	379	372
December.....	.....	998	909	.....	300	314
12 months to end of September.....	12,356	11,058	.....	3,665	3,576	.....

¹ Including estimates for last three months of calendar year 1917.

Senator WATSON. When did the Adamson law go into effect?

Commissioner CLARK. I think that is a hard question to answer.

Senator WATSON. I was wondering whether or not you could segregate it in order to show how much, if any, the Adamson law had increased the wages, and therefore the operating expenses.

Commissioner AITCHISON. That was one of the questions in the original 15 per cent rate case.

Senator WATSON. I do not desire to go into that case.

Senator CUMMINS. I want to call your attention to one item in the report you have submitted, for the first nine months of 1917, relating to the eastern district. It appears that according to these monthly reports the expenses of the maintenance of way and structures is about \$9,000,000 more for 1917 than for the same period in 1916.

Commissioner AITCHISON. That is correct.

Senator CUMMINS. It would not appear that there had been any deferred maintenance, so far as 1917 is concerned.

Commissioner AITCHISON. That involves the question of how much a dollar will buy. While spending more dollars in 1917 they might not have done as much work as in 1916.

Senator CUMMINS. If the reports are to be accepted, they evidently spent about \$9,000,000 more.

Commissioner AITCHISON. That unquestionably is true.

Senator CUMMINS. And for the maintenance of equipment these roads spent about \$27,000,000 more.

Commissioner AITCHISON. That is correct.

Senator CUMMINS. Now, I come to the large item of increase, namely, that of transportation. For 1917 these nine months are charged with an expenditure of \$546,535,875, and for the same period in 1916 they are charged with \$421,323,356, making a difference of something like \$125,000,000.

Commissioner AITCHISON. Yes, sir.

Senator CUMMINS. What are the chief items of expenditure under the head of transportation?

Commissioner AITCHISON. Of course that item will normally follow the amount of transportation carried, except so far as the law of increasing returns will keep the expenses down. But there was more traffic, and fuel was more expensive.

—Senator CUMMINS. What are the chief items of expenses that are collocated under that head?

—Commissioner AITCHISON. Of conducting transportation?

Senator CUMMINS. Of transportation.

Commissioner AITCHISON. Train dispatchers, station employees, weighing, inspection, demurrage bureaus, coal and ore wharves, station supplies, yard expenses, fuel for yard locomotives, and other supplies; train engineers and train expenses generally, including fuel, engine-house expenses, trainmen, telegraph and telephone operation, and a number of minor items. The main items are fuel and wages.

Senator CUMMINS. The wages of the men who actually move the trains?

Commissioner AITCHISON. Yes, sir.

Senator CUMMINS. And the yardmen?

Commissioner **ATTCHISON**. And dispatchers, telegraphers, and station employees.

Senator **CUMMINS**. Who are directly connected with the movement of trains?

Commissioner **ATTCHISON**. Yes, sir.

Senator **CUMMINS**. I want to call your attention to another subject. You have been connected, in a way, with the proceedings for the valuation of the railways for some time, have you not?

Commissioner **ATTCHISON**. Yes, sir.

Senator **CUMMINS**. Since when, and in what capacity?

Commissioner **ATTCHISON**. I was first a member of the committee of the State Railway Commissioners appointed in November, 1915, which had to do generally with the Federal valuation, and I continued as a member of that committee until my nomination was sent in as a member of the Interstate Commerce Commission. From May until I was nominated as a member of the Interstate Commerce Commission, I was the legal representative of that committee of state railway commissioners in Washington, and kept in close touch with the work. Now I am a member of Division 1 of the Interstate Commerce Commission, which has administrative charge of the valuation work.

Senator **CUMMINS**. In your opinion, how long would it be, if the commission were free to go along with the work, before they would arrive at a valuation of the railways of the country?

Commissioner **ATTCHISON**. I should answer that by saying it depends absolutely on the legal departments of the carriers, because they have it in their power to do as I am convinced they have in the past, delay the progress of the valuation work very materially. I do not say this a deliberate policy, but rather the effect of trying all these valuation proceedings as lawsuits.

Senator **CUMMINS**. I am assuming that there would be the right kind of cooperation, either voluntary or involuntary.

Senator **POINDEXTER**. I would like to understand that, briefly. How do the legal departments of the roads delay that work; how have they delayed the work of valuation?

Commissioner **ATTCHISON**. I think they have pressed their claims to an absurd extent. Questions have been argued, reargued and argued again before the commission, and it has only been recently that the commission has been able to get a case submitted.

Senator **POINDEXTER**. Is not the procedure before the commission?

Commissioner **ATTCHISON**. Under the control of the commission, yes; but I was not on the commission then.

Senator **CUMMINS**. Assuming that in the future there will be the right kind of cooperation and the utmost speed, how long will it be?

Commissioner **ATTCHISON**. Up to the present time the field work of inventorying has been done on approximately 150,000 miles of main line out of 250,000 miles of main line in the country. The commission is working now with approximately 60 field parties, and continuing with that number, by the 1st of January, 1920, the remaining 100,000 miles will be covered. This includes large carriers and small carriers.

On many of the large roads the field work has been done now, but the result has not been put in the shape of tentative reports, for the reason that it has seemed that until the first cases were submitted

and decided by the commission it would involve a waste of work and effort to put the results in the shape of tentative reports, which might have to be upset as the result of the decision of the commission on the first case.

Of course, the roadway and the trackway parties do not have all the inventory work. There is somewhat of a lag there, which is taken up by the other people, as they come after the roadway party.

The ability of the commission to complete its inventory work depends not solely upon the force which the Government can put in, but the valuation act requires the cooperation of the carriers, and the carriers must be relied upon to supply a large amount of data in the first instance from their own records, and therefore the ability of the carriers to do that to a certain extent measures the speed which the Government has been able to make, and can make.

We could take all 60 parties and throw them onto the Pennsylvania system, but the trouble would be that the Pennsylvania Road would not be able to accommodate those parties and keep up its part of the undertaking which Congress has imposed upon it, to cooperate with the commission and furnish the information necessary to keep a large number of men at work.

Senator CUMMINS. As I understand it, the commission has not rendered an opinion in reference to the valuation of any road, as yet?

Commissioner ATTCHISON. The three typical early roads were submitted about two weeks ago.

Senator CUMMINS. Was an opinion rendered?

Commissioner ATTCHISON. No; they were submitted to the commission, and the reports are in preparation on those.

Senator CUMMINS. The Bureau organized by the commission for the work, of which Judge Prouty is the head, has reported its conclusions with regard to certain roads?

Commissioner ATTCHISON. Yes, sir; and it has a large number of others that are in abeyance, awaiting something from the commission as to what should be included.

Senator CUMMINS. I do not want to anticipate any opinion or decision of the commission, nor to ask you what your judgment is with regard to anything upon which you must finally pass as a member of the commission; but I would like to know your opinion, and that of the other members of the commission who are here, with respect to this question: Assuming that the principles which have been adopted by the committee on valuation, for which, of course, the commission is not responsible, shall be finally accepted by the commission, what will be the aggregate value of all the railroads in the country.

Commissioner ATTCHISON. I will have to ask to be excused from hazarding an answer to that question, not because of a desire to avoid an answer or for any of the reasons you suggested, but because I do not think any human being can tell at this time.

Senator CUMMINS. I did not know but that in view of the fact that you had been familiar with the work of the valuation committee and have gone into the subject somewhat fully, that its work could be fairly projected to the end, and the outcome reasonably known.

Senator TOWNSEND. Do I understand correctly, that this valuation is to be made of a certain date?

Commissioner ATTCHISON. It is being made as of different dates. The roads are being taken as of different periods. However, the prices applied so far—and I am thinking of what the Bureau of Valuation has done, rather than the commission—the Bureau of Valuation has applied prices as of 1914, taking that as a normal price year; and the explanation made is that if it should be desired later to increase the cost values because of increases in prices of material and labor, that can be more readily done if the carriers are all on a common basis, than if part of their lines are on a basis of the 1917 figures and part of them on a basis of 1915 or 1914 figures.

Senator TOWNSEND. So, that your final report will have to be brought down to the date of the report?

Commissioner ATTCHISON. The law contemplates that the valuation shall be kept up to date, and that can be done with the exception of fluctuations in the prices of material and labor by means of the additions and betterments accounts of the carriers, now kept in accordance with law and reported to us. We are getting that information right along.

Senator CUMMINS. Confining my question to roads that have been reported upon by the committee on valuation, what is the relation of the report of the committee in reference to the valuation, as compared with the book value or investment account?

Commissioner ATTCHISON. Of course you have touched on the fundamental question as to whether the act contemplates that a single value shall be fixed or that the three costs and other values and elements of value shall be determined.

Senator POINDEXTER. What do you mean by the three costs?

Commissioner ATTCHISON. The three costs are the reproduction cost new, the cost of reproduction less depreciation, and the original cost to date.

Senator CUMMINS. The committee has adopted, with respect to all properties, unless it be real property, the view that it shall be the cost of reproduction, less depreciation, has it not?

Commissioner ATTCHISON. No, sir. The Bureau of Valuation has taken the view in the tentative reports made by it that it should report these three costs, what it finds as to other elements of value—and they have not found any yet—and stop at that, leaving the question as to which of these values shall be taken in the ordinary rate case or condemnation, capitalization, or the like, to be determined when the question arises.

Senator CUMMINS. Now, can you furnish to the committee the report of the Bureau of Valuation, so far as the roads that are involved are included in that report?

Commissioner ATTCHISON. I can, but I think your question, in order to condense the record, will need modification. I take it you want the totals of the three costs rather than the voluminous valuation of each road.

Senator CUMMINS. I think it will be better if you can furnish the total.

Commissioner ATTCHISON. Perhaps I can best do that by seeing that you are supplied with copies of the notices sent to the carriers.

Senator CUMMINS. Those would show the totals in the case of each road, of the three bases that have been reported upon?

Commissioner ATTCHISON. Yes, sir.

Senator CUMMINS. And these reports will also show or the notice will show the book value or the investment account as shown by the railroads?

Commissioner AITCHISON. If they do not, that will appear in the accounting report, where the general balance sheet is set up, and I can get that figure and put it in for you.

Senator CUMMINS. I wish you would furnish that.

Senator KELLOGG. To what roads does that apply?

Commissioner AITCHISON. That applies to the Texas Midland, the Atlanta, Birmingham & Atlantic, the Kansas City Southern System, the Winston-Salem Southbound, and the New Orleans, Texas & Mexico.

The following statement contrasts the Mexico, and Elgin, Joliet & Eastern so-called book values or investment accounts of certain carriers with sums reported by the engineering and land sections of the Bureau of Valuation of the Interstate Commerce Commission, covering the reproduction cost, new, of road and equipment and the present value of lands as measured by the value of similar adjoining or adjacent lands. These figures are compiled by the Bureau of Valuation from the tentative reports made in the six cases mentioned. As the result of conference between the bureau and the carriers, certain joint recommendations have been made which will slightly increase the reproduction and land-value figures as reported and carried into the table, if the recommendations are accepted by the commission.

Carrier.	Reported by engineering and land sections.	Carrier's investment account.
Atlanta, Birmingham & Atlantic R. R. Co.....	\$23,808,772	\$53,325,751
Georgia Terminal Co.....	1,507,723	4,776,769
Alabama Terminal R. R. Co.....	2,155,316	5,798,710
Texas Midland R. R.....	3,618,664	2,748,171
Kansas City Southern Ry. Co. (including Texarkana & Fort Smith Ry. Co. and Kansas City, Shreveport & Gulf Ry. Co.).....	47,780,457	99,578,383
Kansas City Southern subsidiaries (including Fort Smith & Van Buren Ry. Co.; Maywood & Sugar Creek Ry. Co.; Port Arthur Canal & Dock Co.; Poteau Valley R. R. Co.; Arkansas Western Ry. Co.; Kansas City, Shreveport & Gulf Terminal Co.; and Glenn Pool Tankline Co.).....	2,706,490	5,011,258
Winston-Salem Southbound Ry. Co.....	5,552,302	5,526,187
New Orleans, Texas & Mexico R. R. Co.....	9,007,322	15,780,644
Elgin, Joliet & Eastern R. R. Co.....	15,717,359	18,643,453
Chicago, Lake Shore & Eastern Ry. Co.....	23,620,520	22,433,010
Joliet & Blue Island Ry. Co.....	447,322	100,000
Total.....	135,923,063	233,712,338

The foregoing statement does not show certain lands reported by the land section as noncarrier lands. In some cases these lands, or parts of them, are included in the investment account of the carrier, showing investment in road and equipment. The present value of these lands is reported by the land section as follows:

Atlanta, Birmingham & Atlantic R. R. Co.....	\$145,203
Georgia Terminal Co.....	853,811
Alabama Terminal R. R. Co.....	163,438
Texas Midland R. R.....	10,342
Kansas City Southern Ry. Co.....	132,312
Subsidiary companies named in preceding table.....	133,369
Winston-Salem Southbound Ry. Co.....	105,310
New Orleans, Texas & Mexico R. R. Co.....	15,759
Elgin, Joliet & Eastern R. R. Co.....	524,074
Chicago, Lake Shore & Eastern Ry. Co.....	157,206

The classification of these lands as between carrier and noncarrier and the present values as reported will be changed somewhat if the joint recommendations of the Bureau of Valuation and the carriers are accepted in certain of the cases mentioned.

Senator KELLOGG. Do you consider those roads fairly representative of the railroads of the United States?

Commissioner AITCHISON. Oh, no.

Senator KELLOGG. Then they would not give us any idea at all of what the other roads would be worth?

Commissioner AITCHISON. The Kansas City Southern is the most representative and the Winston-Salem Southbound is the most recently constructed.

Senator KELLOGG. But you do not consider them fairly representative of the main mileage of the United States?

Commissioner AITCHISON. Not of the class 1 roads, although some of them are class 1 roads.

Senator KELLOGG. The class 1 roads include 97 per cent of the roads?

Commissioner AITCHISON. Yes.

Senator KELLOGG. Then we could not form much of an idea as to the value of the railroads from those on which you have completed the valuation?

Commissioner AITCHISON. Not from those concerning which tentative reports have been given.

Senator POINDEXTER. And do these reports include as one of the items the original cost?

Commissioner AITCHISON. Where that is obtainable.

Senator CUMMINS. Your reports will show the book value or the investment accounts of all the railroads, will they not?

Commissioner AITCHISON. Yes, sir.

Senator CUMMINS. That is, your annual reports?

Commissioner AITCHISON. Yes, sir. May I be permitted to say this, in connection with your question as to the time when the valuation will be completed: Manifestly a different question will be presented as to procedure and time if the work which the Bureau of Valuation is doing is to be used for Government purposes in a condemnation suit. Section 19a of the act to regulate commerce provides that the result shall be prima facie evidence in proceedings before the commission and in actions in court arising out of the act to regulate commerce. That manifestly does not include condemnation cases, and consequently it would require legislation to make the findings of the commission prima facie evidence in condemnation cases.

But on the other hand, if the work of the Bureau of Valuation were desired by the Government, so that our experts would be called as witnesses on behalf of the Government by the United States district attorney who might be trying the case, manifestly much of this delay I spoke about in getting submissions in cases tried as lawsuits would be entirely avoided, and much of the report writing and the service of notices and the filing of protests and the taking of testimony on the exceptions would be done in court in the first instance rather than before the commission.

Senator CUMMINS. The whole point of my inquiry is this: Assume we had to ascertain as nearly as we could the value of the use of all the railroad property in the United States, how soon could we expect

a result if the Interstate Commerce Commission was created as a tribunal for the trial of condemnation cases?

Commissioner AITCHISON. Many of the important roads of the country we could go in on by the time the parties were ready to try it. We could not go in on the Pennsylvania, because that is one system on which a comparatively small amount of work has been done, and we could not on the Baltimore & Ohio. But take the Rock Island, or the Santa Fe, or the Great Northern, or the Western Pacific, or the Boston & Maine, I think I might safely say that the field work is substantially all done.

Senator CUMMINS. There is no difficulty in reaching a result within a year or two?

Commissioner AITCHISON. As to those carriers?

Senator CUMMINS. As to the value of the use of this property which the Government has taken over.

Commissioner AITCHISON. I would not want to undertake it as to the Pennsylvania System within that time, because in the program which was long ago outlined, it appears that the Pennsylvania Road and the Baltimore & Ohio did not come on early enough, so that the field work is at the stage I have indicated as to those carriers.

Senator CUMMINS. In that event, of course, the railroad companies would be quite as anxious as the Government to speed the trial of the cases, I take it.

Commissioner AITCHISON. As time goes on and methods are developed here, I do not think we are going to have each case tried as a lawsuit after the first cases. Already there is much more of spirit of accommodation than there was a few months ago, and the carriers and the forces of the commission are getting together on joint recommendations, subject, of course, to the approval of the commission.

Senator KELLOGG. You do not think it would be possible for the commission, using the information it is procuring from the valuations, to arrive at the value of the use of all the railroads in the United States during the next two years?

Commissioner AITCHISON. I would not want to say that as to all the railroads.

Senator KELLOGG. The railroads have been taken over now, have they not?

Commissioner AITCHISON. I believe so.

Senator KELLOGG. Then there is some obligation on the part of the Government to pay for the use of these properties, is there not?

Commissioner AITCHISON. That is my recollection of the Constitution.

Senator KELLOGG. Do you imagine that the question of compensation could wait two or three years while we are having the railroads valued?

Commissioner AITCHISON. I do not see how, if the legislature, acting on its own sense of responsibility, refuses to make an appropriation, there can be compensation, because as I read the opinions, the question of compensation ultimately depends on the sense of justice of the legislature.

Senator KELLOGG. Do you think Congress should wait for this valuation?

Commissioner **ARCHISON**. You are asking me what my judgment is as to the basis of compensation which should be made, and how it should be made, and I want to respectfully submit that I am an administrative officer, and I am not charged with judicial functions, and I understand this is a judicial question.

Senator **KELLOGG**. I was asking you about something you testified to in answer to Senator **Cummins**.

Commissioner **ARCHISON**. I was not urging any course of action.

Senator **KELLOGG**. Has the commission considered any plan of compensating the railroads for the use of their property?

Commissioner **ARCHISON**. The commission has not, as a commission. Doubtless individual commissioners have had it in mind.

Senator **KELLOGG**. You are not ready to make any recommendations?

Commissioner **ARCHISON**. No, sir; not myself; nor has the commission considered it.

Senator **KELLOGG**. I did not understand you to say you thought the question of arriving at the amount of compensation should await the final valuation of the roads.

Commissioner **ARCHISON**. I have not attempted to pass any judgment upon that, but simply endeavored to give Senator **Cummins** the best information I could as to the facts.

Senator **KELLOGG**. As I understood you, you said you thought the railroad lawyers had delayed the valuation.

Commissioner **ARCHISON**. I think the final submission of the first case, unquestionably, is due to that.

Senator **KELLOGG**. The valuation is going on; the inventories have gone on; they have nothing to do with that?

Commissioner **ARCHISON**. The field work has gone on, but translating that into final results has been held up until the first case has been decided. The land department does not know now whether to include the areas of streets longitudinally occupied by carriers, because the commission has not passed on that question.

Senator **KELLOGG**. Have they done more than to argue the questions before the commission?

Commissioner **ARCHISON**. No; but they have taken a good deal of time about that and filed extremely voluminous briefs.

Senator **KELLOGG**. Is it not their duty to fully present the question to the commission of the value of the properties?

Commissioner **ARCHISON**. Let me explain—

Senator **KELLOGG**. Answer my question.

Commissioner **ARCHISON**. Unquestionably it is the lawyer's duty to present to the tribunal the interests of his client fairly and as expeditiously as the case will permit.

In January, 1916, extensive argument was had upon many of these questions, which have since been argued and reargued two or three times.

Senator **TOWNSEND**. May I ask you there, could not the commission prevent that; could not the commission fix a limit of time when these arguments could be repeated?

Commissioner **ARCHISON**. Inasmuch as I took part in those arguments, I would rather be excused from discussing the action of the gentlemen who are now my colleagues, and whom I think might possibly have indicated that they had enough of it.

Senator TOWNSEND. I am interested in what you are saying, but you have charged the railroad attorneys with this fault, and I am wondering if there were not two parties to that difficulty, the members of the commission and the attorneys themselves.

Commissioner AITCHISON. The commission doubtless has been very desirous to hear everything they had to say, recognizing the great importance of the matter, and they have not shut anybody out who had anything to say.

Senator WATSON. I believe you were the counsel on the other side in some of the cases?

Commissioner AITCHISON. I did not recognize that I was on any side. I was there representing the States and appearing as a friend of the commission.

Senator WATSON. I think you said you were counsel.

Commissioner AITCHISON. Counsel for the States. The States by law are brought in as parties in the proceedings.

Senator WATSON. You did not construe that your position was adverse to the railroads?

Commissioner AITCHISON. No, sir. My instructions were to do what I could to aid the commission.

Senator POINDEXTER. What, in general, was the cause of the slowness of the proceedings before the Interstate Commerce Commission? Was that due to the commission being overburdened with work, or was that due to the system of procedure before the commission?

Commissioner AITCHISON. I think it would be somewhat presumptuous of me to try to diagnose the difficulties that may have occurred, inasmuch as I have only been a member of the commission for a few months. The first 10 days I sat on the commission I had 3,000 pages in printed briefs put up to me.

Senator POINDEXTER. I have had an idea myself that it was due to the commission having about twice as much work as they ought to have. You are familiar with the Inter-Mountain cases, so called, the long-and-short-haul cases?

Commissioner AITCHISON. I know the cases are pending.

Senator POINDEXTER. Do you know how long they have been pending?

Commissioner AITCHISON. I think they have been pending since the Hepburn Act was passed, in one shape or another.

Senator POINDEXTER. Even before that. How long has that been?

Commissioner AITCHISON. Since 1906, I believe.

Senator POINDEXTER. Is it not a fact that no order made by the Interstate Commerce Commission in those cases has ever been put into effect, as made?

Commissioner AITCHISON. No; that is not the case. The class rates, and schedule A commodity rates, have long been adjusted with reference to the fourth section, by orders of the commission. I would suggest that Commissioner Clark could better answer those questions than myself.

Senator POINDEXTER. I have been told that every order ever made in that case has been either entirely suspended or modified before it was put into effect, and it was a well-known fact that the issue still remains unsettled.

Senator WATSON. I believe you stated that in your judgment the railway managers could not have handled this whole situation, could

not have carried the freight under their management which they ought to carry, or that is demanded they should carry.

Commissioner AITCHISON. It is my judgment that under existing circumstances the competition which has been the basis in the past can no longer give good service.

Senator WATSON. Suppose the matter had been left to the Interstate Commerce Commission and the President had taken over the railroads and confided the management and control of the roads to the Interstate Commerce Commission instead of to one man—and I cast no aspersions upon any one man—in your judgment, could not the Interstate Commerce Commission have handled the situation?

Commissioner AITCHISON. I do not know. There are some things I think we would have tried.

Senator WATSON. Precisely. You are entirely familiar with the whole railroad question and have been dealing with it for years, and are organized for that purpose, and have been in touch with the men who had to do with the operation and management of the roads and are familiar with the existing situation and with the difficulties and evils of the present system, if such there be.

Commissioner AITCHISON. You are speaking of the commission as a whole and not of myself?

Senator WATSON. I am speaking of the commission as a whole.

Commissioner AITCHISON. I think it is generally regarded as an expert body.

Senator WATSON. Do you not feel, if the matter had been committed to your keeping, you could have managed it, as the railway managers under their management have increased the traffic as much as 50 per cent in 1917 over what it was in 1915?

Commissioner AITCHISON. That is what they claim, although that does not correspond with the revenues.

Senator WATSON. They increased traffic?

Commissioner AITCHISON. Yes.

Senator WATSON. And increased it with each succeeding month over the previous month, did they not, as long as they continued in control?

Commissioner AITCHISON. It has been substantially on the same basis, as far as revenue is concerned, from May until September.

Senator WATSON. Then the railway managers did not increase the traffic?

Commissioner AITCHISON. An increase of 3 per cent from May to September in revenues.

Senator WATSON. I understand their claim is that they increased the freight actually hauled 20.3 per cent in 1916 over what it was in 1915 and 50 per cent in 1917 over what it was in 1915. That was in the six months' period.

Senator KELLOGG. That is, in the six months from April 1, I think.

Commissioner AITCHISON. I wanted to call Senator Poindexter's attention to the fact that by a recent act of Congress the Interstate Commerce Commission has been permitted to subdivide itself, so that it hopes that it will dispatch this work in better shape; and it is my understanding that in the last calendar year the commission sat hearing cases or in conference for 220 days out of 313 week days in the year.

Senator KELLOGG. The questions argued before the commission by yourself and the attorneys representing the railroads on these questions of valuation were of great importance and went to the very foundations of the valuations, or to a great extent, did they not?

Commissioner AITCHISON. Yes, sir; I think they involved the most huge sums ever submitted in any human tribunal.

Senator KELLOGG. They were as important as any questions ever submitted to any court, so far as property is concerned?

Commissioner AITCHISON. Yes, sir.

Senator KELLOGG. It is reasonable to suppose that they should be very thoroughly presented.

Commissioner AITCHISON. I think they were, several times.

Senator KELLOGG. The commission had absolute control over the time in which they should be submitted, did they not?

Commissioner AITCHISON. I think so.

Senator KELLOGG. You joined in a report containing certain recommendations. You made two recommendations in that report, did you not?

Commissioner AITCHISON. Yes, sir.

Senator KELLOGG. The first was to allow the carriers——

Commissioner AITCHISON. Pardon me; not recommendations.

Senator KELLOGG. What do you call them?

Commissioner AITCHISON. We suggested that there were two possible alternatives.

Senator KELLOGG. Two suggestions, then. The first suggestion you made was that the carriers be permitted to operate as a unit all the lines in the United States. Am I correct as to that?

Commissioner AITCHISON. Yes, sir.

Senator KELLOGG. And the second suggestion is that the President, under the war power, during the period of the war take over all the railroads for operation by the Government?

Commissioner AITCHISON. Yes, sir.

Senator KELLOGG. Did the commission favor those suggestions in the order of their statement?

Commissioner AITCHISON. I do not think it is fair to assume that the commission indicated its preference by the order of statement. As a matter of fact, the commission took no formal action in indicating which one it did favor, and I am certain I would not want the inference to be drawn——

Senator KELLOGG. Is it your experience, so far as the departments of the Government are concerned, that the Government business is done more efficiently than private business in the country?

Commissioner AITCHISON. I do not know of any case where the parallel is close, except with respect to the Post Office Department and the express companies.

Senator KELLOGG. Take the War Department and the Navy Department and all departments of the Government. Do you think that their business is more efficiently done than private business?

Commissioner AITCHISON. I do not believe I can answer that, Senator.

Senator KELLOGG. You believe in Government operation of the railroads, do you?

Commissioner AITCHISON. At the present time I think it is necessary. I would not have felt so a few months ago and did not feel so.

Senator KELLOGG. You believe in permanent ownership and operation of the railroads by the Government?

Commissioner AITCHISON. I would rather it would not come that way, but I regard it as inevitable.

Senator KELLOGG. Do you think the Government must own the railroads?

Commissioner AITCHISON. I think it will own them. A man may think a thing is inevitable without hoping for it to occur.

Senator KELLOGG. You think the ownership of the railroads by the Government is inevitable?

Commissioner AITCHISON. I believe so. I think that is the general consensus of opinion of the State commissioners with whom I have talked.

Senator KELLOGG. You believe the Government will operate the railroads more efficiently than private enterprise?

Commissioner AITCHISON. I do not say so. I was careful to say that I regarded it as inevitable; whether I regard it as desirable is a different question, and I felt I did not want to be driven to saying I favored governmental ownership.

Senator KELLOGG. To operate the railroads as a unit, you recommended that the pooling clause and the antitrust laws should be suspended as to the railroads during the war?

Commissioner AITCHISON. Yes, sir.

Senator KELLOGG. You did not think they could be operated as a unit with those laws in existence?

Commissioner AITCHISON. No, sir.

Senator KELLOGG. Then, if Congress had simply provided that those laws should not apply during the war and the railroads might operate as a unit, that would have cured that, would it not?

Commissioner AITCHISON. That would have cured that particular part. But the underlying difficulty in making that arrangement a success is the training of the traffic and operating man to look after his own road. I can best illustrate that by a little example that has occurred right here. The newspapers in Washington have practically simultaneously carried an advertisement of the Southern Railway Co. asking people not to travel over its lines and an advertisement of the Southern Pacific Co. asking people to go to California by way of New Orleans.

Senator KELLOGG. The railroads were being operated, in spite of those laws, substantially as a unit, were they not?

Commissioner AITCHISON. No, sir.

Senator KELLOGG. Their equipment was being used interchangeably. They were calling on other roads for cars and engines to be sent to the eastern lines, and that was complied with, was it not?

Commissioner AITCHISON. Freight equipment has always been regarded as interchangeable.

Senator KELLOGG. They were directed to route the traffic, to a greater or lesser extent?

Commissioner AITCHISON. Subject to the restrictions of the act to regulate commerce and not opening new routes to any considerable extent.

Senator KELLOGG. Where could they have opened a new route for the heavy traffic from Pittsburgh, even if the law had been amended?

Commissioner AITCHISON. I think they discovered one, as they used the Western Maryland as a parallel line with the Baltimore & Ohio.

Senator KELLOGG. They did that, did they not?

Commissioner AITCHISON. They said they did.

Senator KELLOGG. They did, but the Government took over the road.

Commissioner AITCHISON. Yes, sir; but how long the Western Maryland will continue to haul empty cars for the benefit of the Baltimore & Ohio I can not say.

Senator KELLOGG. You were talking about the amount of money for income in 1916 available for dividends and improvement of property and sinking funds, and you said that sum was \$645,846,244.

Commissioner AITCHISON. Yes, sir.

Senator KELLOGG. That is correct, is it?

Commissioner AITCHISON. Yes, sir.

Senator KELLOGG. What was actually paid out for dividends during that year?

Commissioner AITCHISON. There was actually paid out \$188,029,553.

Senator KELLOGG. And the balance was used for improvement of property and sinking-fund purposes?

Commissioner AITCHISON. The amount for sinking funds was \$14,806,353 and for investment in physical property, \$62,510,058; miscellaneous appropriations of income, \$20,315,699; and the balance, which was transferred to profit-and-loss account, or surplus, was \$360,184,581.

Senator KELLOGG. I want to ask you if that balance is always carried in money?

Commissioner AITCHISON. No, sir.

Senator KELLOGG. Is it not, in most cases, invested in property?

Commissioner AITCHISON. When invested in the property of the operating or owning company, it is reflected in the item which I read, of income appropriated for investment in physical property.

Senator KELLOGG. Do you understand that all of the surplus of the railroads appearing on their books to-day, all the railroads in the United States, is in money?

Commissioner AITCHISON. No, sir; it is not.

Senator KELLOGG. Is it not nearly all in property, or a large part of it?

Commissioner AITCHISON. Yes, sir; in property, or what represents property; namely, securities, stock holdings, bonds, and so forth.

Senator KELLOGG. In its own property or the property of the roads which it operates?

Commissioner AITCHISON. Not necessarily the property of the roads which it operates. It may have heavy holdings in other companies.

Senator KELLOGG. Generally speaking, that is not the case with the railroads throughout the country; most of their holdings are in roads that they control?

Commissioner AITCHISON. In general, your question should be answered yes.

Senator KELLOGG. The practice, then, of the railroads has been that very much of their surplus which appears on their books has been necessary to be used in betterments and improvements which are in the nature of permanent betterments?

Commissioner AITCHISON. If it is put back into their own property, it appears as an appropriation of income and not in the income balance, which is transferred to profit and loss.

Senator KELLOGG. In many cases it is put back into their own property, is it not?

Commissioner AITCHISON. Yes, sir.

Senator KELLOGG. Then you do not believe that the railroads' income should be held down to simply the dividend and interest paid?

Commissioner AITCHISON. I would prefer, inasmuch as that is an issue which is directly raised in the valuation and in the 15 Per Cent case, not to answer that.

Senator KELLOGG. Do you think it is good railroad economics or good economics for the people generally that railroads should borrow money and capitalize all their betterments and improvements?

Commissioner AITCHISON. It unquestionably is better economics if an investment is, to a considerable extent, derived from direct contributions in the shape of stock subscriptions or the like, rather than borrowing.

Senator KELLOGG. Borrowing on bonds is another method?

Commissioner AITCHISON. Yes, sir; and on short-time notes.

Senator KELLOGG. But do you not think it is better that a reasonable amount of the income of a railroad should be invested in improvements and betterments, rather than to capitalize them all?

Commissioner AITCHISON. It unquestionably adds very much to the credit and the stability of the carrier, and also does reflect itself in its capital account in the shape of its account of investments.

Senator KELLOGG. Then you would recommend that, generally speaking, the railroads should not be held down simply to the dividends and interests paid out in their earnings, would you not?

Commissioner AITCHISON. They are entitled to a fair return, unquestionably, on the value of property devoted to the public use.

Senator KELLOGG. How are we going to get at it?

Commissioner AITCHISON. In the first place, it is usually an administrative question in fixing a schedule of rates, and then it becomes a judicial question as to what the reasonable return is.

Senator KELLOGG. Then it is put up to Congress to be both a judicial and executive body. I suppose, Mr. Aitchison, the increase of the expenses of the roads this year is principally due to the increased cost of what they have to buy and the increased cost of labor?

Commissioner AITCHISON. As to those two items and as to the increased cost due to their carrying of traffic and taxes.

Senator KELLOGG. Increased taxes, of course. The increased costs to the railroads were not all reflected in the earlier months of 1917, were they?

Commissioner AITCHISON. I believe they were not.

Senator KELLOGG. It is a fact, is it not, that railroads buy their material on yearly contracts and keep a large surplus on hand?

Commissioner AITCHISON. Yes, sir; that is good railroading.

Senator KELLOGG. And as time goes on and those contracts run out they have been paying increased prices for material?

Commissioner AITCHISON. On the whole; yes, sir.

Senator KELLOGG. And prices on the 1st of January this year are much greater than prices on the 1st of January last year?

Commissioner AITCHISON. I do not know how that is as to coal.

Senator KELLOGG. As to most items they buy?

Commissioner AITCHISON. Contrasting the two firsts of January; yes, sir.

Senator POMERENE. Along the same line I want to ask one or two questions, and I want to make a brief statement before I do that. On Monday, as well as to-day, although I was not able to be here all the time, we were given the net profits of the railways for the last five or six years. In order to enable us to properly interpret those figures I want to ask you a question or two.

Are you able to express an opinion as to what increase there has been in the cost of railway supplies and equipments for the year 1917 as compared to the year 1916 in percentages?

Commissioner AITCHISON. I do not know how I can reduce that to a simple figure.

Senator POMERENE. I understand you can not answer that question exactly, but the members of the commission have evidently taken this matter into consideration, and I thought they would be able to express a view which would aid us.

Commissioner AITCHISON. While there has been considerable increase, as we all know, I do not believe I can express that with any degree of safety in a percentage.

Senator POMERENE. Can you express a minimum and maximum which would probably cover the situation?

Commissioner AITCHISON. Doubtless there are many things which have not increased at all, and doubtless there are many other things which have increased 100 per cent.

Senator POMERENE. What would be an average, in your judgment—50 or 60 per cent?

Commissioner AITCHISON. In materials?

Senator POMERENE. I said in supplies and equipment. I would like you to bear that fact in mind.

Commissioner AITCHISON. Probably so.

Senator POMERENE. Probably 50 or 60 per cent?

Commissioner AITCHISON. Yes, sir.

Senator POMERENE. What would you say was the increase for the year 1916 over the year 1915?

Senator CUMMINS. Before you pass this matter, I do not want any misapprehension to creep in. This table you have furnished shows that the railway operating expenses for 1917 amounted to \$2,082,064,377, and for the year 1916, \$1,749,674,543.

Senator POMERENE. That does not quite touch the thought I have in mind. It may be—

Senator CUMMINS. It could not have been a 50 per cent increase.

Senator POMERENE. That does not answer my question. Perhaps I did not make myself clear. I take it for granted that a railroad company may have arbitrarily, during one of these years, bought

more engines or other supplies than it bought during another year. I want to determine, if I can, what is the purchasing power of this dollar, which represents the surplus.

As a general proposition, I want to know whether the railroads bought equipment or supplies. Assuming, for the sake of the argument, that they intended to purchase a given part of their equipment and supplies in 1916, and a given amount of equipment in 1917, what was the increase in the price of these supplies and equipment for the year 1917 over the year 1916?

Commissioner AITCHISON. I understood your question to apply as of the beginning of the present year, or the end of the year 1916 to the beginning—

Senator POMERENE. I intended to cover the entire year.

Commissioner AITCHISON. I heard the testimony in the original 15 Per Cent Rate case, and on the rehearing of it, and I do not think there was any weighted figure developed there. I would call your attention to the fact that the commission in its report in the 15 Per Cent Rate case states what Dun's Index Number of prices was, Dun's Index Number of metal prices, Dun's Index Number of iron and steel prices, and also Dun's Index Number of miscellaneous prices.

Senator POMERENE. Then you would not be able in any degree to state what the general increase was of all equipment and supplies for the year 1917 over the year 1916?

Commissioner AITCHISON. Not for the same units. I can tell you what freight cars cost certain carriers in 1917 as compared with what they cost in 1916, and I can tell you what the metal and fuel prices were, and I can give you the Index Number of prices as reported by Dun & Co. But when you take all of the many items of a railroad and try to bring them to a single figure, it is too much for my finite knowledge.

Senator POMERENE. We have all been discussing surplus here, and net income of the entire systems of railroads for each of these several years. Under normal times, when the purchasing power of the dollar is one and the same thing, that leaves a pretty accurate impression upon my mind as to the earning capacity of the several railroads, when I know what the net income is. But when you take into consideration the fact that there has been an extraordinary increase in the cost of supplies and of equipment in one year over another year, then a mere statement to me as to what the surplus is for a given year, in comparison with that for another year, does not enable me to come to a very accurate conclusion, and I wanted, if you could give to this committee, a statement showing what the increase in the cost of supplies and equipment for the year 1917 was over that of the year 1916, and what it was for 1916, in comparison with 1915, and for 1915 in comparison with 1914, or 1913.

Senator TOWNSEND. Would you include labor?

Senator POMERENE. I would go into that later. Are those earlier years regarded as normal years? I would have you state that, and then, as Senator Townsend suggests, I would also have a similar statement as to the wage increase, then we will be able to interpret what these financial figures mean.

Commissioner AITCHISON. I could not attempt to give you a statement which will show how much less the purchasing power of the dollar was, when it gets into the net income for the stockholder or other person who may be entitled to it in 1917, as compared with 1916; but I can give you Dun's Index figure, and I am able to give you what the carriers in the eastern territory in the Fifteen Per Cent Rate case said would be their increased operating expenses in 1917 over 1916.

Senator POMERENE. I would be glad to have that, and if the commission can furnish it, if they can not give a statement of the percentage of the increase in the cost of all railway supplies and equipment for 1917 over 1916, if they could give us a tabulated statement showing the increase in the price of engines, of the same quality and make, and of freight cars, and of wages, and all the other important items which might be embraced within the meaning of the term "railroad equipment or supplies," I think it would be of material assistance to the committee.

Commissioner AITCHISON. I can submit that now as to the cost of freight cars and locomotives in 1917, as compared with prices in 1916, or prior to that time, and also the same information as to fuel.

Senator POMERENE. I would be glad to have that go into the record now, and if you can furnish that information I asked for later. I would be more than pleased to have it.

Commissioner AITCHISON. Tables Nos. 3, 4, and 5, on pages 338 and 339 of report No. 45, Interstate Commerce Commission Report, being the original report in the Fifteen Per Cent case.

(The tables referred to are as follows:)

TABLE 3.—Statement showing cost of freight cars in 1917 as compared with prices in 1916 or prior thereto.

Carrier.	Unit.	1916	1917	Remarks.
Western Maryland Ry. Co.....	Each.....	\$1,034.69	\$1,529.31	Coal cars.
Northern Pacific Ry. Co.....	do.....	¹ 1,041.98	2,175.00	Gondolas; last lot purchased in 1913.
		¹ 1,558.67	2,475.00	Refrigerator cars; last lot purchased in 1913.
Peerless Transit Line.....	do.....	900.00	3,750.00	\$900 to \$1,100 shown simply as "former price." The
		to over	to over	"over \$4,000" is price for
		1,100.00	4,000.00	immediate delivery.
Pennsylvania Lines east.....	do.....	1,466.00	3,742.00	Steel coal cars.
		1,500.00	3,555.00	Steel box cars.
Illinois Central R. R. Co.....	do.....	1,681.95	2,600.00	
Chesapeake & Ohio lines.....	do.....	948.80	1,531.03	
Chicago, Burlington & Quincy R. R. Co.	do.....	² 808.00	² 1,540.00	Box cars.
Atlanta, Birmingham & Atlantic Ry. Co.	do.....	² 1,637.00	² 1,891.00	Gondolas.
				This company has had bid submitted in 1917 for 2 combined steel baggage, mail, and express cars. This compares with the price paid the same company in 1916 for 2 units of same equipment of \$23,640.
Southern Pacific Co.....	do.....	1,468.05	2,806.96	Oil tank cars.
		1,294.76	1,918.60	Gondola cars.
		9,785.54	12,319.26	Combination baggage and mail cars.

¹ 1913.

² 1915.

³ 1916 price is for 1917 delivery.

TABLE 4.—Statement showing prices paid for locomotives in 1917, as compared with 1916 or prior thereto.

Carrier.	Unit.	1916	1917	Remarks.
Delaware & Hudson.....	Each.....			Price of a locomotive 25 per cent larger than former is 200 per cent higher.
Western Maryland Ry. Co.....	do.....	\$37,276.11	\$66,531.14	
Toledo, St. Louis & Western R. R.....	do.....	19,452.74	24,315.92	
		42,025.76	61,200.00	Class Z-2 locomotives.
		27,977.40	42,700.00	Class W locomotives (January delivery).
Northern Pacific Ry. Co.....	do.....	42,700.00	61,950.00	Class W locomotives (April delivery).
Union Pacific.....	do.....	14,913.00	26,780.00	Switching locomotives.
New York, Chicago & St. Louis.....	do.....	19,250.00	23,375.00	1917 locomotives bought under option given November, 1916; if bought in open market would have cost \$31,750.
Pennsylvania lines east.....	do.....	39,000.00	63,000.00	Freight locomotives.
Chicago, Indianapolis & Louisville Ry. Co.....	do.....	31,300.00	59,000.00	2-10-2 type.
Illinois Central R. R.....	do.....	22,205.00	41,690.70	Mikado locomotives.
		12,400.00	26,756.26	Switching locomotives.
		27,818.00	42,934.99	Pacific passenger locomotives.
Cincinnati & Ohio lines.....	do.....	31,019.41	48,138.66	Freight and switching locomotives.
Chicago, Burlington & Quincy R. R. Co.....	do.....	26,518.00	46,450.00	2-20-2 freight. ¹
		22,017.00	42,505.00	Mikados.
Norfolk & Western Ry. Co.....	do.....	43,360.34	77,500.00	Quotation not accepted and none bought.
Pere Marquette Ry. Co.....	do.....	Not shown.	56,250.00	2-10-2 type.
		Not shown.	38,900.00	Switchers.
Southern Ry. Co.....	do.....	38,400.00	73,850.00	Santa Fe type.
		25,483.10	35,850.00	8-wheel switchers.

¹ 1913.² 1915.³ 1916 price for 1917 delivery.

TABLE NO. 5.—Comparison of fuel price per ton.

EASTERN DISTRICT.

	1916	1917		1916	1917
New York, New Haven & Hartford.....	\$1.25	\$3.98	Erie Railroad.....	\$1.35	\$2.50
Water freight charges.....	.60	4.50	Do.....	1.20	2.05
Rail freight charges.....	1.50	1.50	Pennsylvania lines west.....		(1)
Baltimore & Ohio.....	1.10	1.58	Pennsylvania lines east.....		(2)
Philadelphia & Reading.....	1.56	2.355	Chesapeake & Ohio.....	1.0552	1.50
Central of New Jersey.....	2.462	3.334	Boston & Maine.....	1.25	3.15
Do.....	1.15	2.68	Added water freight.....	.60	4.50
Great Lakes Transit Corporation.....	2.75	5.25	Maine central.....	3.54	5.54
			Bangor & Aroostook.....	3.37	4.81

SOUTHERN DISTRICT.

Norfolk & Western.....	\$1.26	\$2.24	Atlanta, Birmingham & Atlantic.....	\$1.438	\$2.116
Southern Ry.....	.94	1.61	Atlanta & West Point.....	1.20	2.05
Do.....		2.00	Central of Georgia ¹	1.26	1.66
Seaboard Air Line.....	1.076	2.169			

WESTERN DISTRICT.

Chicago & North Western.....	\$0.90	\$1.25	St. Louis & San Francisco.....	\$1.65	\$2.20
Do.....	1.90	2.70	Northern Pacific.....	3.05	6.00
Chicago & North Western lake coal.....	3.00	6.00	Union Pacific.....	1.18	1.535
Southern Pacific Co.....	3.27	5.15	Do.....	1.42	2.45

¹ Increase of 66 cents.² Contract expires July, 1917, and will thereafter be higher.³ Increase of 90 cents.

Senator TOWNSEND. There has been a good deal said here by you and others, and some statements by members of the committee that there have been increases in tonnage during 1917 over 1916 on railroads. Now, this tonnage, as it comes to the Interstate Commerce Commission, originates with the conductor on the train that hauls the freight, does it not, and he reports to his superior, and it finally finds its way to the Interstate Commerce Commission?

Commissioner AITCHISON. I think the waybill is the basis of the railroad account.

Senator TOWNSEND. This is the point I want to get at, to see if there is any confusion here. Let us take a train running between here and New York, which originates here. Let us say it has 50 cars in the train. The train starts out, and we will imagine a possible case that by the time the train reaches New York, it still has 50 cars, but the original 50 cars have been dropped along the road, and others picked up. When we use the term "ton per mile," do we mean simply the original tonnage of the 50 cars, or how do they segregate or multiply that tonnage?

Commissioner AITCHISON. That takes into account all of the freight which moves for the exact distance which it does move. In other words, if the car started from Washington for Baltimore with a carload of some commodity, the station abstract of waybills would be used in the auditor's office as a basis for the computation of ton-miles. The ton-miles are computed, not by the station agents or the conductors, but by the clerks in the auditor's office, upon the basis of the train and station papers which come in.

Senator TOWNSEND. So every car is accounted for separately for the actual number of miles it travels?

Commissioner AITCHISON. Yes, sir.

Commissioner CLARK. It is the total amount of traffic moved for the actual distance moved, reduced to a common denominator of tons of freight moved 1 mile. If a car contains 30 tons and moves 50 miles, that is fifteen hundred ton-miles.

Commissioner AITCHISON. That would be the same as 1 ton moved fifteen hundred miles.

Commissioner CLARK. It does not make any difference how many times a car may be picked up and set out.

Mr. THOM. It is all a compilation of the waybill, is it not?

Commissioner CLARK. It is all taken from the waybills, and taken from the auditor's office.

Senator POINDEXTER. Can you state approximately the amount of tonnage for any recent year between the Atlantic and Pacific coast that might be called transcontinental tonnage?

Commissioner CLARK. We can furnish those figures from the transcontinental records.

Senator POINDEXTER. Has there been any congestion of that traffic?

Commissioner AITCHISON. There is congestion at the Pacific terminals; yes, sir.

Senator POINDEXTER. Would that not be relieved if more of it went through the Panama Canal?

Commissioner AITCHISON. Yes, sir.

Senator POINDEXTER. And more of it would be apt to go through the Panama Canal if there were no obstructions in the way of canal tolls and charges imposed upon it, would it not?

Commissioner AITCHISON. That is my personal opinion, sir; but, of course, right now I do not imagine the amount of the canal tolls, is the controlling element in the matter.

Senator POINDEXTER. Whether or not there are established lines of transportation which have amounted to a controlling element, they are very important element in the situation?

Commissioner AITCHISON. Yes; and I am of impression—while I have not given it deep study—I am of the impression that the increase in charter rates on the Pacific coast has been so high that the amount of canal tolls is relative unimportant.

Senator POINDEXTER. You are familiar with the general system of rate making by which it is assumed, as a basis, that the freight is carried to the terminal and then back hauled a certain distance?

Commissioner AITCHISON. I am familiar with the transcontinental system of rate making, to a certain extent.

Senator POINDEXTER. That is based upon building up terminals and using those as centers of distribution for the surrounding country, including the back country over which the freight has passed to reach the terminal, is it not?

Commissioner AITCHISON. It involves the question as to whether the rate is cheaper by means of ocean transportation and then the rail transportation back into the interior than by all rail, and to what extent the rail carriers should be permitted to meet that competition. That is, of course, an issue which is in the transcontinental cases you have referred to.

Senator POINDEXTER. That is one phase of the question you have stated, but I am speaking about the economic question of unnecessary hauls of freight, in a time when the capacity of the railroads has reached its physical limit.

Commissioner AITCHISON. I do not understand that the existing rate structure contemplates that material is necessarily hauled to the coast and then hauled back over the same rails.

Senator POINDEXTER. As a matter of fact, that is the result, is it not, of making rates to interior points based upon the coast rates and the back haul to the interior points, or a certain proportion of the back haul?

Commissioner AITCHISON. I have not taken it that way.

Senator POINDEXTER. Can you state whether or not it is a fact?

Commissioner AITCHISON. It is not.

Senator POINDEXTER. Take the cities of Seattle and Tacoma and Portland, is not freight hauled to those cities over the transcontinental lines reaching them, and then hauled back into the interior country?

Commissioner AITCHISON. It is hauled back when the interior country does not have the facilities to distribute it, or does not directly purchase it from the East.

Senator POINDEXTER. Spokane has facilities.

Commissioner AITCHISON. I understand that freight stops at Spokane and does not go to the coast and come back.

Senator POINDEXTER. As a matter of fact, some of it does.

Commissioner AITCHISON. I do not think that the bulk of it does. If that freight is bought by the Spokane merchant in the East, it stops at Spokane.

Senator POINDEXTER. But if it is brought by a Spokane merchant in Seattle or Tacoma, having already been shipped to those points from the East, it covers that distance of over 400 miles twice, instead of once, in order to reach its destination. That would be entirely avoided, would it not, that waste of transportation, looking at it purely from a public standpoint and not from the standpoint of the revenues derived by investors in railroad securities, if the interior points were given the same rate for the short haul that the coast points are given for the long haul?

Commissioner AITCHISON. I think it would be highly improper for me, unless I am forced to do so, to answer that question, inasmuch as it is an important question which the commission has to determine, and it has been lately heard by one of the examiners and is before us for decision.

Senator POINDEXTER. That would not amount to a determination of the case, but I will not insist upon an answer.

One result, is it not, of the practice of charging the interior points the terminal rate and an additional rate based on the back haul, or a certain portion of the back haul is to prevent or obstruct the development of water transportation, ship lines?

Commissioner AITCHISON. It involves the question to what extent the rail carrier may be permitted to meet water transportation, and that is a question which the commission, under the amended fourth section, has a right to pass on, and is charged with the duty of passing on.

Senator POINDEXTER. It involves the question to what extent it may be able to meet water transportation, and to ultimately overcome that competition and then make up in lack of revenues that may be derived from that by extra charges on the interior country, does it not?

Commissioner AITCHISON. Assuming that the Interstate Commerce Commission should permit them to make a rate which would be below the cost of the service; but as I recall the decisions of the commission in cases already decided, they have repudiated that doctrine.

Senator POINDEXTER. If the rate to the terminal is a reasonable rate based on the cost of the service, then the extra rate, or the higher rate for the shorter haul over the same line in the same direction would be more than reasonable?

Commissioner AITCHISON. If you ask me about past decisions of the commission, Senator, I can only discuss them as any other student of them would, but if you are asking me about the decision in this case which we are presently to make, I would prefer not to answer such a question.

Senator POINDEXTER. I am just asking you for your opinion about this general question of public policy.

Commissioner AITCHISON. I do not think the carrier should be permitted anywhere to take traffic which does not bear some fair proportion of the general cost. Whether it does in this particular case is a question I have to decide, and I am keeping my mind open as to what the facts are.

Senator POINDEXTER. If they are not allowed to charge less than a reasonable rate for a long haul to the end of the line, they would be required to charge a reasonable rate, and it would follow, would it not, as a matter of necessity, that if they charge a larger rate for

the short haul to the intermediate points, they would be overcharging?

Commissioner AITCHISON. I think you are overlooking the fact that the word reasonable is taken in a relative sense.

Senator POINDEXTER. The present system is based upon the hauling of goods as far as you can possibly haul them instead of the least possible distance.

Commissioner AITCHISON. The carrier likes to get traffic and carry it as far as it can.

Mr. THOM. Mr. Chairman, I would like to have the record show that we protest against the statement made by the witness as to the delay in the valuations proceedings being due to the attorneys representing the railroads, and we would like to present evidence to the committee on that subject, if it is desirable.

My information is that the President will present certain facts to the Congress in reference to this situation, and, I take it, that that will be followed by the introduction of bills in reference to the subject, and some very important questions will arise, and I think there would be a duplication of testimony if the railroad representatives proceed at this time. There would be time saved if we are permitted to introduce our testimony after the bills are before the committee and I respectfully ask the committee that, instead of proceeding now, we be allowed to make application to the committee for a hearing at that time.

(Thereupon, the committee went into executive session, and at the conclusion of the executive session took a recess until 3 o'clock, p. m.)

The committee reassembled, pursuant to the taking of recess at 3 o'clock p. m., Hon. Ellison D. Smith (acting chairman) presiding.

The ACTING CHAIRMAN. Mr. Thom, as the representative of the railroads, do you desire to be heard now in connection with this investigation?

STATEMENT OF MR. ALFRED P. THOM.

Mr. THOM. Mr. Chairman, I think that the action of the committee in adjourning to 3 o'clock would probably necessitate some little statement on my part.

This whole situation has undergone a rapid change since the adoption of the resolution by Congress. When the resolution was adopted and the matter was taken up by this committee the question was still an open one as to whether or not the possession or control of the railroads should be taken by the President. In that condition of affairs, we conceived that it was of public importance that what the railroads had done should be placed with some fullness before this committee, and two gentlemen were delegated to prepare statements for the purpose of placing that matter before you.

One of these gentlemen, Mr. Julius Kruttschnitt, chairman of the board of the Southern Pacific Co., had expected to speak for the general situation in the whole country. The other gentleman was Mr. Samuel Rea, president of the Pennsylvania Railroad. He was expected to present the situation as it existed in this congested region, generally referred to as the East.

Then the President issued his proclamation, and the question of whether or not it was desirable to follow one or the other of the recommendations of the Interstate Commerce Commission was foreclosed. As Commander in Chief of the Army and the Navy of the United States in time of war, he decided that question.

Of course, the railroads considered that it was their duty under those circumstances to do nothing except to show their fullest acquiescence and cooperation in what was considered to be necessary as a war measure, and we felt therefore that that question was entirely removed, and that it would not do for any possible dispute to be made in respect to that action.

Nor do I mean by what I have so far said to indicate that there was by any means disapprobation in many quarters of what the President had done. At any rate, irrespective of what might be the views of anybody the conclusion reached was universal that no holding back should be indicated on the part of any railroad manager in respect to a policy which had been deliberately adopted as a war measure.

At the same time we regarded it as a most historical occasion. What I believe to be about one-seventh of the entire property of the United States is affected by it. The result of an event so momentous can not help but have a serious effect upon the history of this people, and we have thought that it was desirable to put on the record the history of what has been done in respect to these railroads under private management since the war began.

You, gentlemen, will remember that the railroad executives were convened in the city of Washington on the 11th day of last April at 10 o'clock in the morning, and that before 3 o'clock in the afternoon they had subordinated their individual and competitive interest that the companies respectively might have and had organized themselves to put the entire railroad facilities of this country at the disposal of the Government—in less than five hours—and we have felt that that is without precedent in the whole industrial history of this country. We wanted to begin with that, and then we wanted to tell what had been accomplished by the voluntary efforts of the railroads, by their voluntary unification, not as a matter of controversy or dispute, but simply as a valuable historic fact, which ought to be found in the records of a committee and the Congress that is considering this immense question. We are confronted, however, by this situation: The event which has taken place is the greatest revolution that has ever occurred, industrially, in the history of any nation. By one stroke of the pen the control of the basic forces of the Nation's power had been transferred from their owners into the hands of the Government. That has resulted in tremendous problems for each company. It has become necessary in this process of transition that the organizations of these individuals properties shall not be disturbed, but shall go on with uninterrupted energy and force, and the head of each one of these companies must of necessity have tremendous responsibilities placed upon him, so that he can go and reassure his organization and keep it in the fullest accord with what is being done and make it produce its best results. Some of our witnesses here were these men clothed with these immense responsibilities. One of them is the chairman of the board of a system of railroads, I think.

with something like 11,000 miles. The other one is the president of a system of railroads which, altogether, probably consists of 26,000 miles. Those men had duties to perform which it was important to the Nation that they should be performed at once. It would not do to have any holding back on the part of any of the inferior officers or employees; it would not do to have any disorganization creeping into those forces. They must all understand what their duties are at once, and they must all understand what is expected of them.

On yesterday we were confronted with that situation. These gentlemen were in town. This committee was not in session. I had to take the responsibility of advising those men to go to their posts and see that this work was carried on, and see that there was no disintegration or disorganization incident to their absence. I did it because of the magnitude of the interests involved, nationally, and the magnitude of the duties that were incumbent upon them in their positions of responsibility toward these great forces, and I did it, too, because I tried to estimate what would be the convenience of this committee.

Here you were confronted with a universal expectation that the President was going to make a recommendation to the Congress. That, we knew, would be followed by bills introduced, perhaps, to carry out the views of the Executive. Doubtless it would be followed also by bills from individual Senators, based upon some other conception of what should be done. There would be questions before your committee as to what should be the basis on which these railroads should be held and controlled by the Government.

We can not tell what the competing propositions will be. Granting that the President's proposition to Congress will be the same as in his proclamation, that does not foreclose the justifiable expectation that there will be some competing suggestion made by some Member of one or the other House, and therefore we can not know until all that has been accomplished and the whole field is laid before your committee, as to what it is to which we should address ourselves.

We realize that, except for the historical interest the most practicable question that will come up is the question, what shall be the status of the \$16,000,000,000 or \$20,000,000,000 of securities outstanding of these railroad companies. That will be the real thing you gentlemen will be most interested in, and that will constitute the greatest duty that will be upon us in appearing before you, to present as well as we can, the considerations which should be in your minds when you come to decide that momentous question.

Now, faced with the duty of these men to be at their posts, and to maintain the integrity and the efficiency of their organization in this great period of transition and revolution of industrial conditions, and with the fact that we knew you did not have the whole case before you, and that we could not have the whole case before us when we appeared before you, I say, I had to take the responsibility of advising these gentlemen to return to their posts, and be here next Monday.

I did that. It may be that I was premature, but I had to act in that situation, and I believe the committee will feel that I did not do it in any spirit except that of promoting the best consideration of this subject.

railroads do not desire to be heard at this time upon the question of compensation, I would not feel at liberty to call upon them.

Senator KELLOGG. I understood Mr. Thom to say that they did wish to be heard.

Senator CUMMINS. I understood he said that upon any bill which may follow the President's message and which sought the control of the matter of compensation, they might or might not desire to be heard upon it. If the bill that is introduced is satisfactory to the railroads, I fancy they will not care to be heard. If it is not satisfactory to the railroads, they may desire to be heard; and if they do desire to be heard at that time, in accordance with the time-honored practice of this committee they will be heard, because we do not foreclose any question of that kind without giving an opportunity for a hearing.

Senator KELLOGG. Do you think we should make a report now to Congress before receiving the communication of the President?

Senator CUMMINS. That is another question.

Senator KELLOGG. I do not think so.

Senator CUMMINS. I am confining myself to the matter of the hearing of the railroad representatives at this time. I understand Mr. Thom's position perfectly well. The men who, from his standpoint, are best qualified to speak on this question are not here. They have left upon the assumption that they would not be called upon to speak upon the question of compensation for some days, or until after the President's message came in. My conclusion from all this is that if the railway companies do not desire to be heard at this time upon any phase of the matter, so far as it has developed. I do not desire to compel them to be heard.

Mr. THOM. We would like an opportunity of a hearing if the committee could accord it to us on next Monday or Tuesday. I suggest that time on the assumption that the public press is correct in saying that the President will address the Congress on one of the latter days of this week, probably Friday, and we have told our people to be in readiness to appear on Monday. We would like an opportunity to be heard. I do not think it will take much of the time of the committee, but we would like an opportunity of presenting some considerations to the committee the first part of next week, if we can be afforded that opportunity.

(After further discussion the committee went into executive session and after executive session adjourned until 10.30 o'clock a. m., Monday, January 7, 1918.)

GOVERNMENT CONTROL AND OPERATION OF RAILROADS.

MONDAY, JANUARY 7, 1918.

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE COMMERCE,
Washington, D. C.

The committee met, pursuant to adjournment, at 10.30 o'clock a. m., in the hearing room of the committee, Capitol Building, Senator Smith, of South Carolina, presiding.

[S. 3385, 65th Congress, 2d session.]

A BILL To provide for the operation of transportation systems while under Federal control, for the just compensation of their owners, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President, having in a time of war taken over the possession, use, and control (called herein Federal control) of certain systems of transportation (called herein carriers), is hereby authorized to agree with and to guarantee to any such carrier that during the period of such Federal control it shall receive as its just compensation an income at an annual rate equivalent as nearly as may be to its average net railway operating income for the three years ending June thirtieth, nineteen hundred and seventeen (called herein standard return); said net railway operating income for the purposes of this act shall, as to carriers making returns to the Interstate Commerce Commission, be computed from such returns, excluding, however, debits and credits arising from the accounts called in the monthly returns leased road rents and miscellaneous rents: *Provided, however,* That no Federal taxes in excess of taxes assessed during the year ending June thirtieth, nineteen hundred and seventeen, shall be charged against revenue in computing such standard return. Any net railway operating income in excess of such standard return shall be the property of the United States. The amount of such standard return as accruing during said period of three years shall be determined by the Interstate Commerce Commission, and the certificate of said commission as to the amount of said net railway operating income shall, for the purpose of such agreement and guaranty, be taken as final and conclusive.

During the period of such Federal control adequate depreciation and maintenance of the properties of the carriers shall be included as a part of the operating expenses or provided through a reserve fund, in accordance with such principles and rules as shall be determined by the President.

SEC. 2. That if no such agreement is made, the President may nevertheless pay or cause to be paid to any carrier while under Federal control an amount not exceeding ninety per centum of such standard return, remitting such carrier to its legal rights in the Court of Claims for any balance claimed; and any amount thereafter found due above the amount paid shall bear interest at the rate of six per centum per annum; and any excess amount paid hereunder shall be recoverable by the United States, with interest at the rate of six per centum per annum.

SEC. 3. That any claim for just compensation not adjusted as provided in section one shall be submitted to a board of three auditors appointed by the Interstate Commerce Commission, members of which and of the official force thereof being eligible for service as such auditors, but without additional compensation therefor. Said auditors shall give a full hearing to such carrier and

to the United States and shall report to the President the amount due such carrier as just compensation; a sum not exceeding the amount so reported may be agreed upon by the President and such carrier. Failing such an agreement, either the United States or such carrier may file a petition in the Court of Claims for the purpose of final ascertainment of the amount of such just compensation, and in the proceedings in said court the report of said auditors shall be prima facie evidence of the facts therein stated. The just compensation of any carrier under Federal control not making returns to the Interstate Commerce Commission shall be determined in accordance with the provisions of this section.

SEC. 4. That the return of any carrier shall be increased by an amount reckoned at a rate per centum to be fixed by the President upon the cost of any additions and improvements made while under Federal control with the approval of the President to the property of any carrier and paid for by such carrier from its own capital or surplus; and by an amount equal to the rate accruing to the United States upon any advances made to such carrier for the cost of such additions and improvements as provided in section six hereof.

SEC. 5. That no carrier while under Federal control shall, without the prior approval of the President, declare or pay any dividend in excess of its regular rate of dividends during the three years ending June thirtieth, nineteen hundred and seventeen: *Provided, however,* That such carriers as have paid no regular dividends or no dividends during said period, may, with the prior approval of the President, pay dividends at such rate as the President may determine.

SEC. 6. That the sum of \$500,000,000 is hereby appropriated out of the Public Treasury from any funds not otherwise appropriated, which, together with any funds available from any excess earnings of said carriers, may be used by the President as a revolving fund for the purpose of paying the expenses of the Federal control, and any deficit of any carrier below such standard or ascertained return, and to provide terminals, improvements, engines, rolling stock, and other necessary equipment, such terminals, improvements, and equipment to be used and accounted for as the President may direct, and to be disposed of as Congress may hereafter by law provide.

The President may also, on or in connection with the property of any carrier, make or order any carrier to make any additions and improvements necessary or desirable for war purposes or in the public interest. He may from said revolving fund advance to such carrier all or any part of the expense of such additions and improvements so ordered and constructed by such carrier or by the President, such advances to be charged against such carrier and to bear interest at such rate and be payable on such terms as may be determined by the President, to the end that the United States may be fully reimbursed for any sums so advanced.

Any loss claimed to accrue to any carrier by reason of any such additions or improvements so ordered and constructed may be determined by agreement between the President and such carrier; failing such agreement the amount of such loss shall be ascertained as provided in section three hereof.

From said revolving fund the President may expend such an amount as he may deem necessary or desirable for the purchase, construction, or utilization and operation of boats, barges, tugs, and other transportation facilities on the inland and coastwise waterways, and may in the acquisition, operation, and use of such facilities create or employ such agencies and enter into such contracts and agreements as he shall deem in the public interest.

SEC. 7. That for the purpose of providing funds requisite for maturing obligations or for other legal and proper expenditures, or for reorganizing railroads in receivership, carriers may, during the period of Federal control, issue such bonds, notes, equipment trust certificates, stock, and other forms of securities secured or unsecured by mortgage, as the President may approve as consistent with the public interest. The President may purchase for the United States all or any part of such securities at prices not exceeding par, and may sell such securities whenever in his judgment it is desirable at prices not less than the cost thereof; any sums available from the revolving fund provided in section six may be used for such purchases.

SEC. 8. That the President may execute any of the powers herein and heretofore granted him with relation to Federal control through such agencies as he may determine, and may fix the reasonable compensation for the performance of services in connection therewith, and may utilize the personnel and facilities of the Interstate Commerce Commission and call upon members of such com-

mission, or any of its employees, or employees of any department of the Government for such services as he may deem expedient. No such Federal official or employee shall receive any additional compensation for such services.

SEC. 9. That the President is hereby authorized, while carriers are under Federal control, to direct that the Federal workmen's compensation act of September, nineteen hundred and sixteen, shall be extended so as to apply to carrier employees, on such terms and conditions as will give due consideration to remedies available under State compensation laws or otherwise.

SEC. 10. That nothing herein contained shall be construed as modifying or restricting the powers heretofore conferred upon the President to take possession and assume control of any or all systems of transportation; and the President, in addition to the powers conferred by this act, shall have, and is hereby given, such other and further powers necessary or appropriate to give effect to the powers herein and heretofore conferred.

SEC. 11. That carriers while under Federal control shall, in so far as is not inconsistent therewith, or with the provisions of this act, or any other act applicable to such Federal control, or with any order of the President, be subject to all laws and liabilities as common carriers; and suits may be brought by and against such carriers and judgments rendered as now provided by law: *Provided, however,* That except with the written assent of the President no attachment shall be levied by mesne process or on execution on or against any of the property used by any such carrier in the performance of its duties as a common carrier.

SEC. 12. That every person or corporation, whether carrier or shipper, or any receiver, trustee, lessee, agent, or person acting for or employed by a carrier or shipper, or other person, who shall knowingly violate or fail to observe any of the provisions of this act, or shall knowingly interfere with or impede the possession, use, operation, or control of any railroad property, railroad, or transportation system hitherto or hereafter taken over by the President, or shall violate any of the provisions of any order or regulation made in pursuance of this act, or of any other act concerning such possession, use, operation, or control, shall be guilty of a misdemeanor, and shall, upon conviction, be punished by a fine of not more than \$5,000, or, if a person, by imprisonment for not more than two years, or both. Each independent transaction constituting a violation of, or a failure to observe, any of the provisions of this act, or any order entered in pursuance hereof, shall constitute a separate offense. For the taking or conversion to his own use or the embezzlement of money or property derived from or used in connection with the possession, use, or operation of said railroads or transportation systems, the criminal statutes of the United States, as well as the criminal statutes of the various States where applicable, shall apply to all officers, agents, and employees engaged in said railroad and transportation service while the same is under Federal control, to the same extent as to persons employed in the regular service of the United States. Prosecutions for violations of this act or of any order entered hereunder shall be in the district courts of the United States, under the direction of the Attorney General, in accordance with the procedure for the collection and imposing of fines and penalties now existing in said courts.

SEC. 13. That the Federal control of transportation systems herein and heretofore provided for shall continue for and during the period of the war and until Congress shall thereafter order otherwise.

GOVERNMENT CONTROL OF RAILROADS.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA—A PROCLAMATION.

Whereas the Congress of the United States, in the exercise of the constitutional authority vested in them, by joint resolution of the Senate and House of Representatives bearing date April 6, 1917, resolved:

"That the state of war between the United States and the Imperial German Government which has thus been thrust upon the United States is hereby formally declared; and that the President be, and he is hereby, authorized and directed to employ the entire naval and military forces of the United States and the resources of the Government to carry on war against the Imperial German Government; and to bring the conflict to a successful termination all of the resources of the country are hereby pledged by the Congress of the United States."

And by joint resolution bearing date of December 7, 1917, resolved:

"That a state of war is hereby declared to exist between the United States of America and the Imperial and Royal Austro-Hungarian Government; and that the President be, and he is hereby, authorized and directed to employ the entire naval and military forces of the United States and the resources of the Government to carry on war against the Imperial and Royal Austro-Hungarian Government; and to bring the conflict to a successful termination all the resources of the country are hereby pledged by the Congress of the United States."

And whereas it is provided by section 1 of the act approved August 29, 1916, entitled "An act making appropriations for the support of the Army for the fiscal year ending June 30, 1917, and for other purposes," as follows:

"The President in time of war is empowered, through the Secretary of War, to take possession and assume control of any system or systems of transportation, or any part thereof, and to utilize the same, to the exclusion, as far as may be necessary, of all other traffic thereon, for the transfer or transportation of troops, war material, and equipment, or for such other purposes connected with the emergency as may be needful or desirable."

And whereas it has now become necessary in the national defense to take possession and assume control of certain systems of transportation and to utilize the same, to the exclusion, as far as may be necessary, of other than war traffic thereon, for the transportation of troops, war material, and equipment therefor, and for other needful and desirable purposes connected with the prosecution of the war:

Now, therefore, I, Woodrow Wilson, President of the United States, under and by virtue of the powers vested in me by the foregoing resolutions and statute, and by virtue of all other powers thereto me enabling, do hereby, through Newton D. Baker, Secretary of War, take possession and assume control at 12 o'clock noon on the 28th day of December, 1917, of each and every system of transportation and the appurtenances thereof located wholly or in part within the boundaries of the continental United States and consisting of railroads and owned or controlled systems of coastwise and inland transportation engaged in general transportation, whether operated by steam or by electric power, including also terminals, terminal companies, and terminal associations, sleeping and parlor cars, private cars and private car lines, elevators, warehouses, telegraph and telephone lines, and all other equipment and appurtenances commonly used upon or operated as a part of such rail or combined rail-and-water systems of transportation; to the end that such systems of transportation be utilized for the transfer and transportation of troops, war material, and equipment, to the exclusion so far as may be necessary of all other traffic thereon; and that so far as such exclusive use be not necessary or desirable such systems of transportation be operated and utilized in the performance of such other services as the national interest may require and of the usual and ordinary business and duties of common carriers.

It is hereby directed that the possession, control, operation, and utilization of such transportation systems, hereby by me undertaken, shall be exercised by and through William G. McAdoo, who is hereby appointed and designated Director General of Railroads. Said director may perform the duties imposed upon him, so long and to such extent as he shall determine, through the boards of directors, receivers, officers, and employees of said systems of transportation. Until and except so far as said director shall from time to time by general or special orders otherwise provide, the boards of directors, receivers, officers, and employees of the various transportation systems shall continue the operation thereof in the usual and ordinary course of the business of common carriers, in the names of their respective companies.

Until and except so far as said director shall from time to time otherwise by general or special orders determine, such systems of transportation shall remain subject to all existing statutes and orders of the Interstate Commerce Commission and to all statutes and orders of regulating commissions of the various States in which said systems or any part thereof may be situated. But any order, general or special, hereafter made by said director shall have paramount authority and be obeyed as such.

Nothing herein shall be construed as now affecting the possession, operation, and control of street electric passenger railways, including railways commonly called interurbans, whether such railways be or be not owned or controlled by such railroad companies or systems. By subsequent order and proclamation, if

and when it shall be found necessary or desirable, possession, control, or operation may be taken of all or any part of such street railway systems, including subways and tunnels; and by subsequent order and proclamation possession, control, and operation in whole or in part may also be relinquished to the owners thereof of any part of the railroad systems or rail and water systems, possession and control of which are hereby assumed.

The director shall, as soon as may be after having assumed such possession and control, enter upon negotiations with the several companies looking to agreements for just and reasonable compensation for the possession, use, and control of their respective properties on the basis of an annual guaranteed compensation above accruing depreciation and the maintenance of their properties equivalent, as nearly as may be, to the average of the net operating income thereof for the three-year period ending June 30, 1917, the results of such negotiations to be reported to me for such action as may be appropriate and lawful.

But nothing herein contained, expressed, or implied, or hereafter done or suffered hereunder, shall be deemed in any way to impair the rights of the stockholders, bondholders, creditors, and other persons having interests in said systems of transportation or in the profits thereof to receive just and adequate compensation for the use and control and operation of their property hereby assumed.

Regular dividends hitherto declared and maturing interest upon bonds, debentures, and other obligations may be paid in due course; and such regular dividends and interest may continue to be paid until and unless the said director shall from time to time otherwise by general or special orders determine; and, subject to the approval of the director, the various carriers may agree upon and arrange for the renewal and extension of maturing obligations.

Except with the prior written assent of said director, no attachment by mesne process or on execution shall be levied on or against any of the property used by any of said transportation systems in the conduct of their business as common carriers; but suits may be brought by and against said carriers and judgments rendered as hitherto until and except so far as said director may, by general or special orders, otherwise determine.

From and after 12 o'clock on said 28th day of December, 1917, all transportation systems included in this order and proclamation shall conclusively be deemed within the possession and control of said director without further act or notice. But for the purpose of accounting said possession and control shall date from 12 o'clock midnight on December 31, 1917.

In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done by the President, through Newton D. Baker, Secretary of War, in the District of Columbia, this 28th day of December, in the year of our Lord one thousand nine hundred and seventeen, and of the independence of the United States the one hundred and forty-second.

WOODROW WILSON.

By the President:

ROBERT LANSING,
Secretary of State.

NEWTON D. BAKER,
Secretary of War.

STATEMENT OF THE PRESIDENT.

I have exercised the powers over the transportation systems of the country which were granted me by the act of Congress of last August because it has become imperatively necessary for me to do so. This is a war of resources no less than of men, perhaps even more than of men, and it is necessary for the complete mobilization of our resources that the transportation systems of the country should be organized and employed under a single authority and a simplified method of coordination which have not proved possible under private management and control. The committee of railway executives who have been cooperating with the Government in this all-important matter have done the utmost that it was possible for them to do; have done it with patriotic zeal and with great ability; but there were difficulties that they could neither escape nor neutralize. Complete unity of administration in the present circumstances involves upon occasion and at many points a serious dislocation of earnings, and the committee was, of course, without power or authority to rearrange charges or effect proper compensations and adjustments of earnings. Several roads which were willingly and with admirable public spirit accepting the orders of

the committee have already suffered from these circumstances and should not be required to suffer further. In mere fairness to them the full authority of the Government must be substituted. The Government itself will thereby gain an immense increase of efficiency in the conduct of the war and of the innumerable activities upon which its successful conduct depends.

The public interest must be first served and, in addition, the financial interests of the Government and the financial interests of the railways must be brought under a common direction. The financial operations of the railways need not then interfere with the borrowings of the Government, and they themselves can be conducted at a greater advantage. Investors in railway securities may rest assured that their rights and interests will be as scrupulously looked after by the Government as they could be by the directors of the several railway systems. Immediately upon the reassembling of Congress I shall recommend that these definite guarantees be given: First, of course, that the railway properties will be maintained during the period of Federal control in as good repair and as complete equipment as when taken over by the Government; and, second, that the roads shall receive a net operating income equal in each case to the average net income of the three years preceding June 30, 1917; and I am entirely confident that the Congress will be disposed in this case, as in others, to see that justice is done and full security assured to the owners and creditors of the great systems which the Government must now use under its own direction or else suffer serious embarrassment.

The Secretary of War and I are agreed that, all the circumstances being taken into consideration, the best results can be obtained under the immediate executive direction of the Hon. William G. McAdoo, whose practical experience peculiarly fits him for the service and whose authority as Secretary of the Treasury will enable him to coordinate as no other man could the many financial interests which will be involved and which might, unless systematically directed, suffer very embarrassing entanglements.

The Government of the United States is the only great Government now engaged in the war which has not already assumed control of this sort. It was thought to be in the spirit of American institutions to attempt to do everything that was necessary through private management, and if zeal and ability and patriotic motive could have accomplished the necessary unification of administration it would certainly have been accomplished; but no zeal or ability could overcome insuperable obstacles, and I have deemed it my duty to recognize that fact in all candor, now that it is demonstrated, and to use without reserve the great authority reposed in me. A great national necessity dictated the action, and I was therefore not at liberty to abstain from it.

WOODBOW WILSON.

The CHAIRMAN. The committee will come to order. The railroad executives were notified to be here this morning, and I take it as the matter of compensation is the question at issue, I think it would be well, as that question is involved in the first section of the bill—I will say to the committee that we are considering now the first section of the bill, which is exactly the same purport as we are considering under the resolution.

Mr. Thom, I believe, is to be heard.

STATEMENT OF MR. ALFRED P. THOM.

MR. THOM. Mr. Chairman and gentlemen of the committee, I understood there were two subjects before your committee, one the Cummins resolution, and the other the bill which has been introduced in Congress and referred to this committee. I understood that the hearings on the two would be merged into one, and the first subject, concerning which we were prepared to put our views historically on the record, was the matter which has been testified about under the Cummins resolution.

The CHAIRMAN. As the Chairman understands it, the first section of the bill is precisely of the same nature of the question that we were

discussing under the Cummins resolution, and the testimony given by the Interstate Commerce Commission in reference to compensation.

Mr. THOM. Yes. Now, as to what had been accomplished by the railroads themselves, a record is being made here, and we have two representatives of what was the Railroads' War Board, who have prepared themselves to put upon the record the facts about what has been done. We realize that is not now a matter of vital interest so far as legislation is concerned, but we thought it would be well to have the record complete on that subject, and if it is not objectionable to the committee I should like to have Mr. Kruttschnitt and Mr. Rea—Mr. Kruttschnitt speaking for the railways throughout the country and Mr. Rea for the eastern roads—put the facts on the record.

Senator ROBINSON. If I may so express myself, I think at this time we ought to give consideration to the conditions of this bill which the committee and the country is interested in. I think the information you would present in the connection you have referred to is very valuable and desirable, but for my part I would rather hear something else first. If you are prepared to go on and present this bill, or the issues involved in it, I would be very glad to hear from you.

Senator UNDERWOOD. While you are on the stand, I should like to ask you one question. This bill pending before the committee seeks in a tentative way to fix compensation, which I understand and believe can be done by an agreement. But do you contend, or is there any contention, that the Congress or the Executive has any power to fix compensation for the taking of private property if there is not an agreement between the parties?

Mr. THOM. Under existing legislation?

Senator UNDERWOOD. Can Congress fix what is the compensation if they take private property for public use?

Mr. THOM. No, except by agreement.

Senator UNDERWOOD. So, in the last analysis, the question of value, if there is not a voluntary agreement, must go to the courts or a quasi-judicial tribunal?

Mr. THOM. Yes; and that is referred to, as I understand, in section 3 of this bill.

Senator UNDERWOOD. Then the question of what ought to be compensation is not so very vital in this legislation, because if the parties can not agree it must go to the courts in the end?

Mr. THOM. It is vital in this way, Senator. Here are securities that are practically the foundation of the financial structure of this country; there is not a bank, national, State, or otherwise, whose financial standing does not rest to a large extent upon the value of railroad securities. The same thing is true of surety companies, and the same thing is true of every business and every benevolent institution. These securities lie at the very base of our whole financial structure. Now, if there is going to be a long period of uncertainty as to them, we must necessarily face a great financial disturbance in the country, and the resources of the country, in a financial way, for the use of the war, would be tremendously impaired. As a consequence, it is very desirable to have a quick method of settling what

the future status of these securities may be, and it is also very important to have a basis on which there can be an agreement without going to the courts.

Senator ROBINSON. Do you think that Congress can fix the basis?

Mr. THOM. No, I do not; but Congress can authorize the President to agree upon a basis, and if the railroads agree also upon that basis, that will eliminate those where there is an agreement.

Senator ROBINSON. But here is the proposition: In the Monongahela navigation case, Judge Brewer held that Congress could neither fix compensation nor fix the basis of compensation for the taking of private property.

Mr. THOM. That is the law.

Senator ROBINSON. If that is true, of course I agree with what you say about the great importance of an early decision of this matter for the country outside of the railroads themselves, but I do not see any reason why we should take time or assume to do something we have no constitutional right to do, and I do not see how we can authorize the President to fix some quick method of reaching a conclusion. We can authorize some tribunal, some quick method of reaching a verdict, if the parties can not get together; but when we have done that, that is as far as Congress can go. The question of the value of these securities we can not fix; we have no power to fix. Is that not true?

Mr. THOM. That is undoubtedly true. Congress has no power under the express decisions of the Supreme Court to fix arbitrarily a basis for the taking over of any private property. That is a matter protected by the Constitution, and must in case of dispute be determined by the established tribunal. Congress can, however, do this. Congress can confer that upon any governmental representative, such as the President; can confer upon him an unlimited power to make an agreement, or it can confer a limited power to make an agreement, and it can provide in cases where there is no agreement for methods by which the matter can be tried out in accordance with the established precedent.

Senator ROBINSON. If it is a judicial trial?

Mr. THOM. If it is a judicial trial. Now, as I understand the bill which you gentlemen have before you, in section 1 there is an authority given to the President to make an agreement with these carriers within a prescribed limit. Then section 3 comes along and says, that if no agreement is made under section 1, then reasonable compensation may be ascertained under section 3. So it seems to me that the questions before you gentlemen are these: Do you consider that it is an important thing that this matter should be settled by agreement rather than by litigation? If you answer that question in the affirmative then the next question is: Where is it wise to repose the discretion to make the agreement, and what is the extent of the discretion which should be reposed?

If you answer, as doubtless you will do, that it is wise to confer the discretion upon the President, then the question which you will have to consider is whether that shall be an unlimited discretion or whether it shall be a discretion to make an agreement on lines which Congress shall mark out. That is one of the questions which I understand arise under section 1.

Then in order to have a system that is constitutionally valid, you have got to deal with the cases where no agreement is possible, and there you must establish a tribunal which will measure up to the requirements of due process, and which will have the authority to inquire and determine what just compensation is. Those are the principles, it seems to me, which control this matter.

Senator ROBINSON. Mr. Thom, if you do not object, in your initial stating of this case, I shall like to ask you a question. I have not reached any definite conclusion myself, but I have some doubts, and I should like to have you clear them up if you can. How far are the officers and the directors of a railroad corporation able to commit their corporation to an agreement as to the value or just compensation for the taking over of the properties? In other words, if the directors of the Southern Railway agree with the President of the United States that a certain fixed sum is just compensation for the taking of that property, how far is that binding on the real owners or stockholders of the road?

Mr. THOM. That is a very serious and a very large question, Senator, that you are asking. Ordinarily the dividing line between the power of the directors and the power of the stockholders is between the things that are vital and the things that are nonvital to the corporation. Everything in the way of management is within the power of the executives and of the boards of directors. When you go into the region of the change in the scope of the business, then it becomes the stockholders' question. When you go into the question of a disposal of the assets of the company, so that its original purpose can not be carried out, it becomes a stockholders' question, and you can readily understand that in a novel situation such as this a great many delicate questions will arise. In the first place here is the war power. Here is the thing done to save the Nation's life. Now, how far is that to be classed with those functions of a corporation which are vital and which the stockholders would have a right to declare?

Senator POMERENE. If I may interrupt, does that not address itself rather to the power to take over and not to the power to determine the compensation?

Mr. THOM. I was coming to that view. Now, then, of course it is clear that the war power may be exercised in the way of taking over these enterprises. When it comes to committing the corporation itself to the terms, it seems to me that the safe thing to do is to have the stockholders ultimately pass upon it.

Senator UNDERWOOD. To enter into an agreement?

Mr. THOM. To enter into an agreement. It seems to me that is the safe thing to do, but of course we are dealing with new subjects; we are dealing with matters somewhat in the twilight zone; and it is impossible for anybody to be dogmatic about a thing of that sort, and I do not hesitate to say that in a tremendous and a vital change in the way of carrying out the corporate purposes of this kind, and in a matter so far-reaching as to determine where the whole manner and usage of these properties are to rest it would be safe to have the stockholders pass upon it.

Senator POMERENE. Following up Senator Underwood's question a little further. Is not this the fact, that the power of your board of directors depends largely upon the provisions of the statutes of

the future status of these securities may be, and it is also very important to have a basis on which there can be an agreement without going to the courts.

Senator ROBINSON. Do you think that Congress can fix the basis?

Mr. THOM. No, I do not; but Congress can authorize the President to agree upon a basis, and if the railroads agree also upon that basis, that will eliminate those where there is an agreement.

Senator ROBINSON. But here is the proposition: In the Monongahela navigation case, Judge Brewer held that Congress could neither fix compensation nor fix the basis of compensation for the taking of private property.

Mr. THOM. That is the law.

Senator ROBINSON. If that is true, of course I agree with what you say about the great importance of an early decision of this matter for the country outside of the railroads themselves, but I do not see any reason why we should take time or assume to do something we have no constitutional right to do, and I do not see how we can authorize the President to fix some quick method of reaching a conclusion. We can authorize some tribunal, some quick method of reaching a verdict, if the parties can not get together; but when we have done that, that is as far as Congress can go. The question of the value of these securities we can not fix; we have no power to fix. Is that not true?

Mr. THOM. That is undoubtedly true. Congress has no power under the express decisions of the Supreme Court to fix arbitrarily a basis for the taking over of any private property. That is a matter protected by the Constitution, and must in case of dispute be determined by the established tribunal. Congress can, however, do this. Congress can confer that upon any governmental representative, such as the President; can confer upon him an unlimited power to make an agreement, or it can confer a limited power to make an agreement, and it can provide in cases where there is no agreement for methods by which the matter can be tried out in accordance with the established precedent.

Senator ROBINSON. If it is a judicial trial?

Mr. THOM. If it is a judicial trial. Now, as I understand the bill which you gentlemen have before you, in section 1 there is an authority given to the President to make an agreement with these carriers within a prescribed limit. Then section 8 comes along and says, that if no agreement is made under section 1, then reasonable compensation may be ascertained under section 8. So it seems to me that the questions before you gentlemen are these: Do you consider that it is an important thing that this matter should be settled by agreement rather than by litigation? If you answer that question in the affirmative then the next question is: Where is it wise to repose the discretion to make the agreement, and what is the extent of the discretion which should be reposed?

If you answer, as doubtless you will do, that it is wise to confer the discretion upon the President, then the question which you will have to consider is whether that shall be an unlimited discretion or whether it shall be a discretion to make an agreement on lines which Congress shall mark out. That is one of the questions which I understand arise under section 1.

it as absolutely essential, if we are not to throw the financial structure of this country into a weakened condition, and to undermine its foundation, that there should be a quick settlement of this matter, and that it should be by agreement wherever an agreement is possible.

Now, we believe this to be the case. We believe there is no rule which would be universally applicable. There are many situations that will be presented where every reasonable man must come to the conclusion that there are exceptional cases which must be dealt with in an exceptional way.

I will illustrate in this way: Here is a basis proposed by the President, which is a compensation arrived at by reference to the value of the use of this property in the hands of its owners over a period of years. Suppose it is new property, where there has been no use, where during these years the property has not been in existence. Manifestly there must be some other way of finding that out.

I will illustrate again. Here is a property which in the last six months has so improved its plant that it has become capable of greatly increased and more valuable use. It has put a lot of money in it. It is able to handle a largely increased volume of traffic. It has removed curves; it has reduced grades; it has done the thing to make an economical use of its property, as economical a use as possible over what it was in the test period. Now, manifestly, what the Government takes over is that plant as it existed on the 28th day of December, 1917, not the plant as it existed on the 30th day of last June. If the plant has changed in all that time so as to be a different thing from what it was during this test period, an exceptional situation arises at once in respect of which there must be some discretion for dealing with it in an exceptional way in order to arrive at it justly. Have you any more questions?

Senator KELLOGG. Mr. Chairman, I suggest that there is only one question in section 1 of this bill before this committee.

Senator ROBINSON. I move that we proceed to the consideration of Senate bill 3385.

The motion was agreed to.

The CHAIRMAN. Mr. Thom, if you are ready, or any of the gentlemen you wish to present are ready to be heard, we shall be glad to hear you.

Mr. THOM. Mr. Chairman and gentlemen, at the outset we desire to be understood that we are in no obstructive attitude in regard to this legislation. We recognize that this is a time when every interest in the country must be willing to make the sacrifices that are legitimately required of it in respect to the successful prosecution of this war, and we shall attempt in the presentation that we shall make to avoid in every way an attitude of obstructiveness. We are confronted, however, with the most monumental industrial transaction that has occurred in the history of mankind. A great deal of the future of this country will depend upon the wisdom with which this situation is met. There are many hundreds of thousands of people that are interested in it. As I stated before, there is not an institution in our land that is not founded upon these very securities. In view of the seriousness of the situation, in view of its far-reaching effect, in view of its influence upon the future and upon the fortunes of so many people, we have tried to consider what the duties of the railroads are in respect to this matter.

the State under which it is incorporated? To illustrate: For instance, in Ohio the question came up some years ago as to how far the board of directors might go in disposing of the business and property of a corporation, and we provided later on by statute a special method whereby the minority stockholders would be taken care of. Now, I am speaking of corporations generally, not of railroad corporations alone. And would it not be correct to say that before we could determine these questions we would have to look definitely to the statutes of each State, and there might be a different rule prevailing in each particular State with reference to the power and business of that corporation?

Mr. THOM. I would express the principle this way, as far as I understand it. I think in a great many States there is a general law relating to the powers of directors. Now that may be changed in any State by restrictions upon those general powers, or it may be changed in any State by the enlargement of those powers. The first thing we would do to find the powers of the directors is to analyze and to appreciate the general principle governing the powers of directors; then we must go to the statutes of every State where there has been an incorporation of one of these carriers to see whether those powers have been in any way altered by statute. That is my understanding of the law.

Senator POMERENE. I think that is correct.

Mr. THOM. But I do not understand, Senator Underwood, that that question is directly involved in the question of whether or not there shall be a power somewhere to make an agreement with these carriers. The question of how that agreement is to be made arises subsequent to that.

Senator UNDERWOOD. That is true, but here is the matter I had in mind. Of course if this matter is settled ultimately in a court or a judicial tribunal, that is a final arbitration as to all parties, but if it is settled by agreement, of course if the Government makes an agreement to pay a certain compensation for the taking over the possession of these railroads and that is agreeable to the carriers, it would be binding on the Government and it would carry out its contract. But if the officers, the directors who entered into that agreement, were not capable of making a binding agreement with the Government, it might bring for them a volume of lawsuits hereafter in which the stockholders might sue the Government for billions of dollars for the taking; therefore, I think the Government itself, if it enters into the agreement, ought to have its side of the case protected.

Mr. THOM. It will. The Government officers, in accepting an agreement with the carriers, will of course see that that contract by competent corporate authority is made——

Senator UNDERWOOD. That is the reason I asked the question, what you considered the competent authority.

Mr. THOM. I think it ought to be regarded as a reasonable safeguard, at least, to have the stockholders assent to whatever arrangement is made. But I repeat that is a matter in the carrying out, and is not related to whether or not there should be a power in some representative of the Government to deal with the competent authorities of the corporation in respect to a basis of compensation. I regard

it as absolutely essential, if we are not to throw the financial structure of this country into a weakened condition, and to undermine its foundation, that there should be a quick settlement of this matter, and that it should be by agreement wherever an agreement is possible.

Now, we believe this to be the case. We believe there is no rule which would be universally applicable. There are many situations that will be presented where every reasonable man must come to the conclusion that there are exceptional cases which must be dealt with in an exceptional way.

I will illustrate in this way: Here is a basis proposed by the President, which is a compensation arrived at by reference to the value of the use of this property in the hands of its owners over a period of years. Suppose it is new property, where there has been no use, where during these years the property has not been in existence. Manifestly there must be some other way of finding that out.

I will illustrate again. Here is a property which in the last six months has so improved its plant that it has become capable of greatly increased and more valuable use. It has put a lot of money in it. It is able to handle a largely increased volume of traffic. It has removed curves; it has reduced grades; it has done the thing to make an economical use of its property, as economical a use as possible over what it was in the test period. Now, manifestly, what the Government takes over is that plant as it existed on the 28th day of December, 1917, not the plant as it existed on the 30th day of last June. If the plant has changed in all that time so as to be a different thing from what it was during this test period, an exceptional situation arises at once in respect of which there must be some discretion for dealing with it in an exceptional way in order to arrive at it justly. Have you any more questions?

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The CHAIRMAN. Mr. Thom, if you are ready, or any of the gentlemen you wish to present are ready to be heard, we shall be glad to hear you.

Mr. THOM. Mr. Chairman and gentlemen, at the outset we desire to be understood that we are in no obstructive attitude in regard to this legislation. We recognize that this is a time when every interest in the country must be willing to make the sacrifices that are legitimately required of it in respect to the successful prosecution of this war, and we shall attempt in the presentation that we shall make to avoid in every way an attitude of obstructiveness. We are confronted, however, with the most monumental industrial transaction that has occurred in the history of mankind. A great deal of the future of this country will depend upon the wisdom with which this situation is met. There are many hundreds of thousands of people that are interested in it. As I stated before, there is not an institution in our land that is not founded upon these very securities. In view of the seriousness of the situation, in view of its far-reaching effect, in view of its influence upon the future and upon the fortunes of so many people, we have tried to consider what the duties of the railroads are in respect to this matter.

The President of the United States, in the performance of what he conceived to be his duty, has taken over these railroads. Likewise, in conformity with what he conceived to be his duty, he has made a suggestion to Congress as to the measure of compensation. How are we to meet that?

If we think that an inadequate basis of compensation, are we to say so in a proper spirit of submission to governmental authority or are we to remain sullen and say nothing? We have arrived at the decision; we have reached this conclusion, that it is our duty to lay before you the facts as we see them. As I said before, and I now repeat, in no obstructive spirit but with a desire to help along to the end of a just and helpful solution of this whole matter, so that in anything we say and in any facts we present I trust that the committee will understand that they are presented in that spirit. Bear in mind, we have arranged to take up the basis which has been suggested for compensation and to present our views about that.

In our judgment, that is an inadequate basis. While at a later stage of your deliberations I shall probably ask the privilege of making before you a legal argument on these questions, I shall assume for the present purpose that what you are trying to do, and what under the Constitution of this country you must do, is to arrive at a fair equivalent of the thing you take.

You take the use of these properties. Your duty, as we understand it, is to ascertain what is the fair equivalent of that use. We shall undertake to sustain the view that the fair equivalent of the use must be arrived at by determining what the use was worth in the hands of these companies themselves at the time that you took the use, or as near to that time as is reasonable and just.

As I have said, we appreciate that that will not be possible in all cases, and that there must be some exceptional method devised of dealing with exceptional cases, but taking the proposition as applicable to most of these carriers, we believe that the only fair and just, and the only legal method of proceeding is to find out what was the value of the use of these properties at the time you took them over, or as near that time as is reasonable and just. We think that all the more true because what the use of these properties was at that time is limited by law. The earnings of these companies was not a matter within their own discretion, but the earnings were limited by a system of regulation in this country, so that there can be no doubt upon the proposition that what the properties showed in the way of the value of the use was legal and proper. If we are right in that—and I say I want to make a more extended argument on that point—if we are right in that conclusion, then the question before you is how must you determine what the value of this was to these companies. Are you to attempt to find it at a particular moment, or are you to attempt to find it by reference to a certain period? And if so, what is the proper period for you to examine in order to find out what the value of this use is?

That brings me to the first point that we want to present in our evidence. The period suggested in this bill is three years ending June 30, 1917, embracing the fiscal years 1915, 1916, and 1917. In England they have taken one year. Here it is proposed to take three years. Now, we shall attempt to show you that the inclusion of the year

1915 produces a result that makes the final figures of compensation entirely inadequate and we shall present our evidence first upon that subject.

Then, there is another question which we will present testimony upon. You took over on the 28th of December, 1917, a certain plant. The proposal is to find out during the years 1915, 1916, and 1917, the earnings of each railroad. Manifestly, if you are to arrive at a just conclusion as to the value of the use of the thing you took over, you must know what the earning capacity of that thing is, not of something else. If you found on December 28, 1917, that the lines of a certain system were twice in length and extent that they were in the year 1915, why, manifestly, you could not say that the value of the thing as it existed in 1917, when you took it over, is to be determined by the value of the thing that is only half as great, only half as valuable in the year 1915.

If you found that the thing you took over was a different thing than what it was in 1916, manifestly you can not conclude that the value of the use of what you took over must be governed by the value of the different thing that existed in 1916. Manifestly again, when you take over on the 28th day of December a certain plant, you can not determine the value of the use of that plant by what a different plant earned the year ending June 30, 1917.

Now, the suggestion in this bill is that the value of what you take over shall be determined by the earnings of certain plants during the years 1915, 1916, and 1917. We shall attempt, in our evidence, to show you that the plant you took over was a different thing from what it was in any of those years. That the plant you took over was greatly enlarged and greatly more valuable than that, and that therefore when you adopted an average of those years for the much larger and more valuable and more capable plant which you actually took over you are granting us an inadequate compensation.

I will confine my remarks at the present moment to section 1. I do not suppose you gentlemen want me to confuse the issues under that section with remarks on any other section of the bill, but we propose to introduce our evidence now on the two points I have alluded to, and as the other sections of the bill are reached I will ask the privilege to present to you views with respect to some of them.

Senator UNDERWOOD. Your proposition, as I understand it, Mr. Thom, is that the just compensation should be the net earning capacity of the railroads at the time of the taking over?

Mr. THOM. Or as near to it as reasonable.

Senator POMERENE. Of course these railroads, when taken over, are subject to the regulatory provisions of the commerce act. Now, assume, for the sake of the argument, that one of these roads was earning for its stockholders a compensation 100 per cent in excess of what would be a fair and just return for that road. When the Government takes that road over, in determining a reasonable compensation for the use of that road in the future ought we not to have in mind at the same time the regulatory provisions of the commerce act, under which the Interstate Commerce Commission could reduce the traffic rates to a point which would be just and reasonable?

Mr. THOM. Senator, I have very firm convictions on that point, and my convictions are that you have no power whatever and should

not exercise any power whatever in respect to that matter. I should like to present with a little fullness the views which I entertain in respect to that, as the matter has been brought up.

Senator POMERENE. At any time you suggest. The question has occurred to me as a very serious one, and I would be glad to have you do it.

Mr. THOM. Here is a power which is being exercised for the purpose of this war to take over certain properties. Now, during 30 years, with different grades and degrees of power, the earning capacity of these companies have been regulated by Government authority. You have a report before you of the regulating body, the Interstate Commerce Commission, which suggests to you that after all these years it is now safe for Congress to assume that the body of rates is a reasonable adjustment of charges, and should be so declared by act of Congress. If, in the taking over of the roads and in determining the amount of compensation to which they are entitled, you can exercise the power of beating down the value of these properties, you would be subject to a temptation which is at war with every principle of morality.

Senator POMERENE. Will it interrupt you if I ask you a question?

Mr. THOM. No; not at all.

Senator POMERENE. Then do I understand that it is your thought that when the Government takes over these roads that, ipso facto, the regulatory provisions of the commerce act are suspended?

Mr. THOM. Oh, no; I do not think so. But I think that if Congress can take over these roads, and in the act of taking them over say they can not be worth what they have permitted them to be worth up to this moment, that Congress would be in a position, condemned by the act of Congress, which prevents a railroad officer from purchasing from a concern in which he has a private interest.

Senator UNDERWOOD. Does that not all go back to the original question that I asked you as to the constitutional status of this case, that we can not take private property without just compensation, and that that is a question that a judicial tribunal must find, and the preliminary foundation on the terms of which we can make an agreement rests fundamentally upon the basis of the court and the fundamental proposition that they can only be taken for just compensation, and that a court must determine that in the last analysis?

Mr. THOM. They must determine it, if it can not be determined by agreement.

Senator UNDERWOOD. Therefore the Congress has no power in itself to fix what is just compensation?

Mr. THOM. No; it has not. Nor has Congress the right to say: "We are about to take over these properties now, and we will make them less valuable because we are going to take them over." Now, Congress attempted that once. Congress wanted to obtain for the Government a lock in the Monongahela River, and in order to get it cheap it said: "Nothing should be allowed for the franchises." And the case¹ went up to the Supreme Court, and the Supreme Court said Congress could not do it; that that was a piece of property; and that that could not be taken away by Congress taking the position that that element of property should not be considered. Now, if

¹ Monongahela Navigation Co. v. United States (148 U. S., 312).

Congress could not prevent the consideration of an element of property which was a legitimate element of property in the act of taking over, in what position will Congress be if they had permitted in all these years a certain standard of earnings to be recognized as legitimate and reasonable and proper and legal, and then when you want to take over the properties you will say: "We will make them cheaper by destroying their value?"

My judgment is that that proposition can not be sustained either in law or in morals. You are engaged in the one act of taking over these properties and paying for them what is a reasonable compensation. And you say: "We have also power under the act to regulate commerce of reducing the value of these properties, and we will do that in order that we can take them over cheaper." In my judgment that would be a violation of both the Constitution of the United States and of the moral principles which control this Government.

So I shall contend before you that your function here is a single function of ascertaining what the use of these properties is worth under the existing conditions, and that you can not change those conditions in order to make them appear to be worth less.

Senator CUMMINS. To clear up some doubt in my mind, I think every lawyer will agree with you that if the Government takes this property it must pay just compensation for its use during the time that the Government is in possession of it. And I think every lawyer would agree with you that Congress can not fix that just compensation; that that is a judicial question. But what I want to be clear about is this: In the first place, have we taken over the property? Has the Government taken over the property, and does this bill provide for taking over the property in the sense of taking private property for public use?

Mr. THOM. It seems to me, as I understand it, this is an administration bill, is it not?

Senator CUMMINS. It may be assumed so, I believe.

The CHAIRMAN. I think that is a very safe assumption.

Senator CUMMINS. The bill came in immediately following the President's message.

Mr. THOM. All I can do is to address myself to the bill.

Senator CUMMINS. What I want to know is from your standpoint.

Senator TOWNSEND. Then you are addressing yourself to the same bill?

Senator CUMMINS. The same bill, of course. Has the Government taken over the property and is it operated, or is the Government simply exercising a larger measure and control and direction for the use of the property by the companies which own it?

Mr. THOM. I think that is an entirely substantial question, Senator.

Senator CUMMINS. In other words, I should like to know, for instance, whether the men who are operating this property now, since the 29th of December, are Government employees. I should like to know whether the money which has come in since that time for the service that has been rendered is Government money and whether the expenditures that have been made from time to time since the 29th of December are Government expenditures. In other words, I want your idea upon whether we are taking this property in

the sense that a Government exercises its power of eminent domain. I supposed we were, but there is very much in this bill and something in the communication of the President which lead me to doubt just our attitude now toward that property as set forth in this bill.

Mr. THOM. In the bill itself you will find a recital in the first line that the President, having in a time of war taken over the possession, use, and control.

Senator CUMMINS. I know that is the recital in the first clause.

Mr. THOM. Now, of course, I have no way of determining what the administration's interpretation of the act which it has done is. I do not know. I think there is a great deal of uncertainty as to the extent of what has been done, but this is done beyond dispute, the management of these properties has been taken away from these companies. The policies of these companies are no longer dictated by them.

Senator POINDEXTER. May I ask you right there, not only the management but the possession? Now, if the possession and the management have been taken over, what is there left for the railroad company?

Senator CUMMINS. That is just the question I asked him, whether possession has been taken over or not.

Mr. THOM. I will tell you why I am answering in the manner I am answering.

Senator CUMMINS. Let me put another question so you will have my full idea. I want to premise it by saying I think we ought to take possession of the property and ought to operate, and ought to pay the companies which own them just compensation for its use; but it would seem to me that it might bear this interpretation, that your use, your direction, your management is being interfered with only to the extent that the Director General issues a particular regulation or order, and that the Government is not attempting to operate the properties, and the order of the Director General in any particular matter bears about the same relation to the use of the property that the order of the Interstate Commerce Commission has heretofore borne to the property when it has issued an order regulating or directing a particular thing to be done.

Mr. THOM. I do not at all think that what has been done can, in any interpretation, be limited as the authority of the Interstate Commerce Commission is limited.

Senator CUMMINS. That ought to be made perfectly certain, should it not?

Mr. THOM. I agree that everything about these properties ought to be made certain. The situation is too important to leave any field of real uncertainty on any important matter connected with them. But at any rate, Senator, I was going to answer Senator Poindexter's question by reference to the situation in England. The language of the English law is very much like the language of the law under which the President acted.

The CHAIRMAN. Will you add that to your statement, the language of the English statute?

Mr. THOM. I think I have it in my pocket.

Senator ROBINSON. And in that connection also, if you have it, put in the paragraph of the act of August 29, 1916, authorizing the

President to take over these properties and under which he took them over. If you do not have it, we can supply it here.

Senator KELLOGG. That is the exact language of the proclamation which is before the committee.

Mr. THOM. Have you the proclamation there? I will read the two together. I have it here, leaving out a few things which are not very essential.

Senator POINDEXTER. May I read just a line there into the record, Mr. Thom?

Mr. THOM. Yes.

Senator POINDEXTER. This is the language of the proclamation.

It is hereby directed that the possession and operation and utilization of such transportation systems as hereby by me undertaken, shall be exercised by and through William G. McAdoo, who is hereby appointed and designated Director General of Railroads.

I just wanted to get that into the record.

Mr. THOM. Now, the English law, leaving out a few things non-essential, and, of course, you can supply them by a full copy of it—

Senator CUMMINS. I have it. I have it at my office, not with me just now.

Mr. THOM. These are the essential parts of the English law:

There shall be paid to any person or body of persons whose railroad or plant may be taken possession of * * * such full compensation for any loss or injury that may be sustained * * * under this section as may be agreed upon between the Secretary of State and the said person or body of persons; or, in case of difference, may be settled by arbitration.

That is the important part of the English law.

Senator CUMMINS. That is the law; that is the order in council?

Mr. THOM. No; that is the law; that is a quotation from the act of Parliament.

Senator CUMMINS. Of 1871?

Mr. THOM. Yes; that is a quotation from the act of Parliament.

Senator CUMMINS. I knew it was in the order of council, but I had forgotten it was in the law.

Mr. THOM. Yes; that is the authority under which the English Government took possession of the railroads of Great Britain.

Senator CUMMINS. I have a copy of the law, very kindly given me by Mr. Thom.

Senator KELLOGG. Can you hand it to the stenographer?

Senator CUMMINS. I shall be very glad to do so.

Senator KELLOGG. There were two statutes, one passed in 1871 and one in the eighties, as I understand?

Senator CUMMINS. Yes. Mr. Thom has begun in the later part of the law. The early part of the law defined what can be done by the council in case of emergency, and that, I think, is the part that was really asked for. I will furnish the full copy.

Mr. THOM. I should like to read into the record the paragraph in our law authorizing the President. It is as follows:

The President, in time of war, is empowered, through the Secretary of War, to take possession and assume control of any system or systems of transportation, or any part thereof, and to utilize the same, to the exclusion as far as may be necessary of all other traffic thereon, for the transfer or transportation of troops, war material, and equipment, or for such other purposes connected with the emergency as may be needful or desirable.

I think that section which Senator Poindexter has read from the proclamation ought to be considered.

Now, how all that may be interpreted is a matter, of course, beyond my control. I think, at least, this is so: That the management and use of these properties for their owners' purposes to the extent that is permissible under existing law has now been interfered with, and the discretion with respect to this management has been turned over to the Government of the United States. Without that discretion the power to control the earning capacity of these properties disappears. We are deprived of the power to control the earning capacity of our properties, because we no longer have the discretion as to their management.

Senator CUMMINS. You had not full discretion before.

Mr. THOM. But we no longer have it to the extent we had it before. The question now comes up: Granting that we did not have it before to the full extent, granting that now we do not have it at all, what is the value of the thing of which we have been deprived? We know what it was to us under the limited authority we had before under existing law; that is a matter which can be stated in figures—in official reports we know what that value was. We now have no power to exercise that portion of our proprietary functions which we had before the President acted. The whole earning capacity of our properties, the whole initiative in respect to them, the whole use of them as separate entities, which was permissible under the law, the whole power of attempting to control business and to send it over our lines according to what the law permitted, is taken away. The properties have been unified, and the rolling stock and the motive power of one have been given to another. The terminals of one company, built at great expense and of great value as an earning asset have been taken away and coordinated so as to be open to all others. There is no longer the capacity to use these properties in accordance with the discretion of their executives or their boards of directors or their stockholders. What they shall earn is no longer a matter of private initiative or private control, but it is a matter of governmental control and that governmental control is being exercised.

Now, what is proposed in respect to it? It is proposed to recognize that change in conditions. It is proposed to guarantee a certain earning capacity and for the Government to take everything over that. If the Government manages them, well enough; if the volume of traffic is great enough, if the earnings go beyond the level of the guarantees, why it becomes the Government's money. What is left to us? No matter what you call it, whether you call it the modified possession that exists in England, where the current money is left in the hands of the carriers and the employees are not Government employees, or whether in this country the plan shall be adopted that all money is Governmental money, that all employees are Federal employees, that the Government recognizes each individual employee as an agent, and does not recognize merely the corporation as an agent, whatever it may be, the very substance of ownership has been taken away from us, and we can no longer control and we can no longer influence the earning capacity of those properties. Now the President says, in his proclamation, the way to deal with that is to guarantee to these railroads the value of their use as it

has been heretofore demonstrated to be, and for the Government to take all above that. Shall we not be deluding ourselves if we attempt to settle that question by determining whether or not the possession is a full possession, whether or not the status of the money as it comes, is that of Government money or private money, and whether or not the representatives of the railroads are Federal employees or railroad employees? The Government has put an end to our private use of these properties. It has put an end to our earnings from them, what heretofore, under the law, we had been authorized and permitted to earn, and have as our own, and whatever form it is, however it may be interpreted, the dominion over these properties has been taken from us, the capacity to utilize them as private property is withdrawn, and the question is, is there anything of value remaining in the use after you take that away?

Senator KELLOGG. Legally all we can do then is to create a commission to assess the value of the use and give an opportunity to review that in some court?

Mr. THOM. I do not think that is legally all you can do. I think that you can grant a discretion to some Governmental body to make a voluntary agreement with these carriers.

Senator KELLOGG. I mean outside of that?

Mr. THOM. And you can not force a carrier to accept that, and therefore you must have a tribunal which will settle the question, if it enters into the reign of disagreement.

Senator KELLOGG. That is what I assumed, of course.

Mr. THOM. Yes.

Senator CUMMINS. My only suggestion in that regard is it ought to be made perfectly clear. The people who are operating the railroads should be either responsible to the Government for fidelity and efficiency, or they should be responsible to their respective companies for the same result. It is a matter of indifference to the railroads, because under this bill they have a certain income guaranteed. And I assume they are patriotic and zealous men, and they will do the best they can, but they ought to be responsible to one head or the other.

Mr. THOM. The question of power, it seems to me, should be made perfectly clear, Senator.

Senator CUMMINS. Certainly.

Mr. THOM. But as to whether or not the full power should be exercised by the Government is a matter of discretion, it seems to me.

Senator CUMMINS. The Government ought to exercise it through, of course, the existing organizations. I agree to that. We could not organize another body of railway operatives. It would be too long and too fatal an undertaking, but it ought to be made perfectly clear, ought it not, that the Government is in possession of this property and that the people operating it are working for the Government and nobody else?

Mr. THOM. It ought to be made perfectly clear by the statute what the limited governmental authority is, but whether the statute should go into details we would question—there ought to be the power somewhere to deal with that question.

What made me say that is the working of the English system. Under this extract from the law, which I have read to you, you see

under the English system there has been a proposal to take possession. The English Government acted under that and interpreted it to mean that the power to take possession included the power to take a qualified possession, and so far they have found it most to the public interest, as the English Government was constituted then, to make it a qualified possession. It was not found necessary to make it clear in the statute of England, in the act of Parliament, exactly what the character of that possession was, because it is a big economic question. It is exceedingly difficult to deal with economic questions, which may vary as situations vary, by an absolute and unyielding statute, and therefore in England what they have done is to take a qualified possession capable at any time of being passed into an absolute possession. They have left the money, the current earnings of the railroads, as railroad money, subject, of course, to complete governmental control. They have left, as I understand it, the railroad operatives as employees of the railroads themselves and have not made them governmental employees. Now, any moment the English may extend that authority. They may take absolute possession. They may take every cent of current earnings; they may make every man in the employment of the railroads wear a uniform.

Senator CUMMINS. They do now. I do not mean all the operatives.

Mr. THOM. Wear a uniform and be responsible as governmental employees. The question is here, whether it is best to have a power in the Government capable of being exercised to the furthest extent or whether it is best to have them exercise it to the fullest extent at once. That is a matter of governmental policy with which you gentlemen will have to deal.

Senator CUMMINS. You have not probably stated fully the English situation. This act was passed in 1871, supplemented, I think, in 1888. The railway executive committee, composed of members of certain of the principal railways of Great Britain, were Government employees before. They held a rank and now hold a rank in the British Army; they are all Government officers, every one of them.

Mr. THOM. That executive committee; yes.

Senator CUMMINS. And they are running the railroads of Great Britain for the Government. As to the physical possession of the money that comes in and is paid out, that is a mere matter of book-keeping.

Mr. THOM. They are Government officers, just as the Director General and the Railroad Board around him are Government officers, but what I am looking to are the people who are running the railroads in England. Now, they are not Government officers, if I understand it correctly.

Senator KELLOGG. They are elected by their various companies.

Senator CUMMINS. The railway executive employees and the railway executive committee are working for the Government.

Mr. THOM. As I understand it, the railway executive committee in England exercises control merely in questions of policy, and gives orders to be carried out by the various companies themselves, making them the agencies of the Government, not the various employees of the railroad, but the corporations. Those are the governmental agencies in England, all the different corporations. While, as you suggest, it is of course of the first importance that the extent of the power which the Government possesses and exercises shall be made

clear, it is not, it seems to me, essential that it should be made clear that the Government must exercise its entire power at any given moment.

Senator CUMMINS. It makes just this difference, as I look at it. If we have simply appointed a Director General to give orders whenever he sees fit to do so to the railway companies as to the management and operation of their property, and in all other respects than those orders, the operation goes on just the same, then if any given railway company is injured beyond the point of fair regulation by an order, a specific order of the Director General, that railway company would be entitled to recover damages from the United States, would be entitled to have its loss made good. That is one thing. The other thing is, that if we have taken possession of the property and withdrawn it entirely from the management of the company, just as a lessee withdraws his property as his property is withdrawn entirely from the management of the lessor, then we must pay the just compensation for use of the whole property. There is a difference, Mr. Thom, in those things.

Mr. THOM. Is it not fair to look at that proposition this way: With a railroad subject to somebody else's orders, the extent of the exercise of which can not be foreseen, but with a knowledge that the whole policy of that railroad is to be controlled by this outside authority, is it possible to conceive that that railroad is capable of private management?

Senator CUMMINS. That would be a very undesirable situation and one we want to avoid.

Mr. THOM. I mean if the power, even if at the moment not exercised, exists, can the railroad then go on and make its plans for the future use of its property in such a way as to get the value of that use to the extent it could if it did not have this outside controlling authority in respect to it? It seems to me in either event the same duty arises to find out what the value of the use is and to have the Government take over all above the guaranteed amount, and the railroad to have everything under and up to the guaranteed amount, and to determine that value on the basis of dealing with the subject as it is in substance, namely, on the theory that the whole dominion of the owner over the property is gone, and he can not longer control the earnings.

Senator WARSON. Suppose this bill was passed just as it is here, Mr. Thom, and a personal injury occurred, who is to be sued?

Mr. THOM. It provides that the company is to be sued.

Senator WATSON. Yes; the railroad company. Then, have you run it out to find who is to pay the damages ultimately; how it is to be paid, and the whole system of accounting?

Mr. THOM. I think all those things are left indefinite.

Senator KELLOGG. Is the committee going to sit during the afternoon? There is a special order in the Senate, I believe, to-day.

The CHAIRMAN. That will be determined by the committee.

Senator UNDERWOOD. I move that the committee, at 12 o'clock, take a recess until to-morrow at 10 o'clock, after which time the meetings of the committee will be continuous until this matter is disposed of.

Senator WARSON. I move to amend that motion by saying, when we recess at 12 o'clock, we shall recess until 2 o'clock, and then proceed, as suggested, with continuous sessions.

Senator UNDERWOOD. That really voice my sentiment in the matter. The motion was agreed to, and at 12 o'clock m. recess was taken until 2 o'clock p. m.

AFTER RECESS.

The committee reassembled at the conclusion of the recess, at 2 o'clock p. m., Senator Smith of South Carolina (chairman) presiding.

Senator CUMMINS. Mr. Chairman, before we begin I desire to furnish, as I said I would, a copy of the British act of 1871, to which Mr. Thom referred this morning. I ask that that be inserted in the record.

(The paper referred to is here printed in full, as follows:)

REGULATION OF THE FORCES, 1871.

[84 and 85 Vict. cap. 86. An act for the better regulation of the regular and auxiliary land forces of the Crown; and for other purposes relating thereto (so far as relates to railways). Aug. 17, 1871.]

POWER OF GOVERNMENT ON OCCASION OF EMERGENCY TO TAKE POSSESSION OF RAILROADS.

16. When Her Majesty, by order in council, declares that an emergency has arisen in which it is expedient for the public service that Her Majesty's Government should have control over the railroads in the United Kingdom, or any of them, the secretary of state may, by warrant under his hand, empower any person or persons named in such warrant to take possession in the name or on behalf of Her Majesty of any railroad in the United Kingdom, and of the plant belonging thereto, or of any part thereof, and may take possession of any plant without taking possession of the railroad itself, and to use the same for Her Majesty's service at such times and in such manner as the secretary of state may direct; and the directors, officers, and servants of any such railroad shall obey the directions of the secretary of state as to the user of such railroad or plant as aforesaid for Her Majesty's service.

Any warrant granted by the said secretary of state in pursuance of this section shall remain in force for one week only, but may be renewed from week to week so long as, in the opinion of the said secretary of state, the emergency continues.

There shall be paid to any person or body of persons whose railroad or plant may be taken possession of in pursuance of this section, out of moneys to be provided by Parliament, such full compensation for any loss or injury they may have sustained by the exercise of the powers of the secretary of state under this section as may be agreed upon between the said secretary of state and the said person or body of persons, or, in case of difference, may be settled by arbitration in manner provided by the "lands-clauses consolidation act, 1845."

Where any railroad or plant is taken possession of in the name or on behalf of Her Majesty in pursuance of this section, all contracts and engagements between the person or body of persons whose railroad is so taken possession of, and the directors, officers, and servants of such person or body of persons, or between such person or body of persons and any other persons in relation to the working or maintenance of the railroad, or in relation to the supply or working of the plant of such railroad, which would, if such possession had not been taken, have been enforceable by or against the said person or body of persons, shall during the continuance of such possession be enforceable by or against Her Majesty.

For the purpose of this section "railroad" shall include any tramway, whether worked by animal or mechanical power, or partly in one way and partly in the other, and any stations, works, or accommodation belonging to or acquired for the working of such railroad or tramway.

"Plant" shall include any engines, rolling stock, horses, or other animal or mechanical power, and all things necessary for the proper working of a railroad or tramway which are not included in the word "railroad."

Senator CUMMINS. Mr. Thom also referred to the British order in council.

Mr. THOM. No; I did not make reference to that.

Senator KELLOGG. But I think it would be a good idea to put it in the record.

Senator CUMMINS. I have a copy of it here.

The CHAIRMAN. Without objection, it will be so ordered.

(The paper referred to is here printed in full, as follows:)

An order in council has been made under section 16 of the regulation of the forces act, 1871, declaring that it is expedient that the Government should have control over the railroads in Great Britain. This control will be exercised through an executive committee composed of general managers of railways which has been formed for some time and has prepared plans with a view to facilitating the working of these provisions of the act.

Although the railway facilities for other than naval and military purposes may for a time be somewhat restricted, the effect of the use of the powers under this act will be to coordinate the demands on the railways of the civil community with those necessary to meet the special requirements of the naval and military authorities.

More normal conditions will in due course be restored, and it is hoped that the public will recognize the necessity for the special conditions and will in the general interest accommodate themselves to the inconvenience involved.

The railway executive committee's own announcement was as follows:

"In view of the announcement made that the Government have taken over the control of the railways, it is desirable that the public should understand exactly what this means.

"The control of the railways has been taken over by the Government for the purpose of insuring that the railways, locomotives, rolling stock, and staff shall be used as one complete unit in the best interests of the State for the movement of troops, stores, and food supplies.

"The necessity for this action must at once become apparent when it is realized that certain ports, through which the bulk of our food supplies enter this country, may be closed for the purpose of such food supplies, and in that event the rolling stock, locomotives, etc., may have to be diverted to other lines for the purpose of serving other ports.

"The staff of each railway will remain under the same control as heretofore, and will receive their instructions through the same channels as in the past.

"On behalf of the Government the control of the railways in Great Britain has been vested in a committee composed of the following general managers: Mr. D. A. Matheson, Caledonian Railway; Sir Sam Fay, Great Central Railway; Mr. C. H. Dent, Great Northern Railway; Mr. F. Potter, Great Western Railway; Sir Robert Turnbull, London & Great Western Railway; Mr. J. A. F. Aspinwall, Lancashire & Yorkshire Railway; Mr. H. A. Walker, London & South Western Railway; Sir Guy Granet, Midland Railway; Sir A. K. Butterworth, North Eastern Railway; Mr. F. H. Dent, South Eastern & Chatham Railway.

"The official chairman of this committee is the president of the board of Trade, and the acting chairman is Mr. H. A. Walker, general manager of the London & South Western Railway.

"The railway secretary to the committee is Mr. Gilbert S. Szlumper.

"We are officially advised that in order to give due effect to the instructions received from the war office and Admiralty for the movement of troops, etc., it may be necessary to discontinue at short notice a portion of the advertised service or to close certain of the lines against ordinary traffic. Under these circumstances no responsibility can be accepted for any delay or loss that may arise."

President Walter Runciman, of the board of trade, said:

"His Majesty's Government have assumed the control of the railways of Great Britain. * * * The individual companies retain the management of their lines subject to restrictions issued by or through the executive committee. * * * No present payments are being made for services rendered to the Government."

The announcement of the board of trade read, in part, as follows:

"Subject to the undermentioned condition, the compensation to be paid (the railways) shall be the sum by which the aggregate net receipts for the period during which the Government are in possession fall short of the aggregate net

receipts for the corresponding period of 1913. If, however, the net receipts of the companies for the first half of 1914 were less than the net receipts for the first half of 1913, the sum payable is to be reduced in the same proportion.

"Distribution among the several companies is to be made in proportion to the net receipts of each company during the period with which comparison is made.

"The compensation to be paid under this agreement will cover all special services, such as those in connection with military and naval transport, * * * and it will therefore be unnecessary to make any payments in respect to such transport on the railways taken over."

STATEMENT OF JULIUS KRUTTSCHNITT, CHAIRMAN OF THE EXECUTIVE COMMITTEE OF THE BOARD OF DIRECTORS OF THE SOUTHERN PACIFIC RAILWAY CO.

The CHAIRMAN. Mr. Kruttschnitt, give your full name and official connection.

Mr. KRUTTSCHNITT. My name is J. Kruttschnitt. I am chairman of the executive committee of the board of directors of the Southern Pacific Railway Co.

The CHAIRMAN. You understand, Mr. Kruttschnitt, that we are now discussing the bill S. 3385, to provide for the operation of transportation systems while under Federal control for the just compensation of their owners, and for other purposes, and you will address yourself to any of the terms of that bill that you see proper.

Mr. KRUTTSCHNITT. Mr. Chairman and gentlemen, I will refer to the first section of the bill that prescribes the basis recommended by the President in his proclamation and in his message as the basis of compensation.

It seems to me that the basis, as prescribed by him, as a guaranty of net operating income of the carriers is altogether sound and fair. But when it comes to the details as to the periods to be taken, it is unfair to the carriers in including the year 1915, which was altogether an exceptional year.

The year ending June 30, 1915, embraced the first 11 months of the European war. It was a period of unusual depression. Business was at a low ebb; commerce had been paralyzed by the vessels being driven off the ocean by the depredations of the Germans, and in every way that I have looked at it I find that it was an exceptional year as to business conditions. Some of the reasons for so believing I will try to give you in detail.

The Interstate Commerce Commission in their statistics for the year ending June 30, 1917, have a paragraph relating to receiverships of railroads in that year. There were 85 roads in the hands of receivers, representing 23,800 miles, an increase of 57 per cent in mileage of roads that were in the receivers' hands in the previous year, 1914. Twelve roads, embracing 20,143 miles, actually were put into the receivers' hands in that year. There were less miles of railroads built in 1915 than in any year since 1849. The mileage built in 1849 was 1,375 miles; in 1865, just after the close of the Civil War, 1,187 miles; and in 1915, 1,000 miles.

In 1915 the scarcity of ships affected the export traffic of the country. Take, for instance, the item of cotton alone. Only 55 per cent of the cotton crop of that year was exported, as against 67 per cent in the previous three years. There was a great dearth of ships; they

could not be obtained to send cotton abroad. That was brought home to us, as our company owns from 26 or 27 ships. It was possible to secure three of four for the exportation of cotton from the southern ports, which were loaded and sent abroad at rates that were much greater than anything that had ever been dreamed of in this country. I think at that time ships could get almost anything they asked. In that year the exports of pig iron were 130,000, against an average of 228,000 tons for the preceding three years. Steel rails, 159,000, as against an average of 403,000 for the preceding three years. The tonnage of sailing vessels and steamships that cleared from the United States in that year was 46,700,000 tons, against an average of over 50,000,000 in the preceding three years.

Take traffic carried by the railroads; passenger miles was the smallest since 1910, being 32,384,000,000, as against 32,338,000,000 in 1910. The ton-miles amounted to 276,000,000,000, against 255,000,000,000 in 1910, 301,000,000,000 in 1913, and 288,000,000,000 in 1914. In other words, it was smaller than in any of the preceding three years except one.

The income from operation of the roads in the United States in 1915 was \$728,000,000, only \$14,000,000, or 2 per cent, more than in 1906, nine years earlier, and, with two exceptions, the lowest in the period, although the book value of the roads and equipment had increased 40 per cent in the interim. The operating ratio of railroads in 1917 was the highest in the table given by the Interstate Commerce Commission since the year 1891.

Take the car surplus and shortage. The American Railway Association, in its circular issued in the middle of 1915, used this language:

From October 15, 1914, to February 1, 1915, the net car surplus was so large and the railroad business depressed so much that the American Railway Association, as a means of economy, temporarily discontinued the compilation of these statistics. On July 1, 1914, there was a surplus of cars of 220,000, which had grown on April 1, 1915, to 327,000, and on June 30, 1915, to 276,000. The bank clearances of that year were \$163,000,000,000, the smallest since 1910, with a single exception.

Senator POMERENE. May I ask of what year you are speaking?

Mr. KRUTTSCHNITT. The year ending June 30, 1915. The receipts of the Government showed a deficit of nearly \$27,000,000, against a surplus in every year since 1910. There was a deficit in the Post Office Department receipts of \$11,000,000, versus net receipts in every year since 1913. There were more commercial failures than in any year since 1860, the number being 22,156.

I give you these facts, selected from the Statistical Abstract of the United States, to show that that year was altogether exceptional in the amount of business done, and, necessarily, in the amount of income coming to the carriers. So that its inclusion in the period of three years contemplated in this proposed guaranty in the bill is unfair to the carriers. It was altogether an exceptional year.

Senator POINDEXTER. What were the exceptional circumstances that caused this depression?

Mr. KRUTTSCHNITT. The European war and the effect of it on the business of this country, and the trans-Atlantic export business.

Senator POINDEXTER. Well, the European war started in the summer of 1914.

Mr. KRUTTSCHNITT. Yes, sir.

Senator POINDEXTER. So that it operated to affect the preceding year as well as that ending June 30—well, that was the year that you were speaking of?

Mr. KRUTTSCHNITT. Yes, sir.

Senator POINDEXTER. It included the first year of the war?

Mr. KRUTTSCHNITT. Yes; the war opened August 1, 1914—the whole year was covered by the war.

Senator POINDEXTER. What changed the situation, then, in the year ending June 30, 1916, while the European war was still in progress?

Mr. KRUTTSCHNITT. The change was brought about by the enormous purchases made by the Allies of supplies of all descriptions in this country. Those purchases were not made immediately after the war broke out, but began about the middle of 1915, so that the last half of the calendar year showed an improvement, and that improvement continued in 1916 and was reflected in the operations for the year ending June 30, 1916.

Mr. THOM. Before you pass from that, Mr. Kruttschnitt, I would like to call attention especially to the conditions with respect to the cotton crops of the South during those first 11 months—during the first 11 months of the war—which were included in the year ending June 30, 1915. Is it not true that it was impossible to market the cotton crop for that year to the extent that the universal movement throughout the South was to get people to buy a bale of cotton?

Mr. KRUTTSCHNITT. Yes, sir; there was such a movement, and the difficulty in marketing was no doubt due to the difficulty of exporting. They could not get rid of it.

Mr. THOM. And not being able to sell the cotton crop, there was a very small relative movement to purchase the merchandise that should come back into the South?

Mr. KRUTTSCHNITT. Very little. Take it on the western lines, for instance, the difficulty in exporting copper, which is one of the great products west of the Rocky Mountains. It closed all the copper mines, and the closing of the copper mines closed a great many of the oil-producing districts in California and checked the movement of fuel. The failure to sell the copper reacted, of course, to the amount of money that the copper people had to spend on fuel and checked lumber shipments on the western roads to a very marked extent.

The CHAIRMAN. Is there any other feature of the bill that you would care to address yourself to, Mr. Kruttschnitt?

Mr. KRUTTSCHNITT. I was going to mention the difference in investment in the three periods. Between 1915 and 1917, both years ending June 30, there was an increase in the investments in the book cost of road and equipment of nearly \$2,000,000,000—\$1,753,000,000. The Interstate Commerce Commission, in its report dated December 1, 1917, gives in a table on pages 36 and 37 the rates of return on the book cost of road and equipment, and that confirms the figures which I have just given. It is the lowest since 1901.

I have shown on a chart here the facts that I have given orally. This chart shows for each year from 1900 to 1917 the rate of return on the cost of road and equipment of all roads in the United States, and I have drawn a line in ink which is rather indistinct but which can nevertheless be made out, giving the average that would result

from using the figures for 1915, 1916, and 1917. You will see that the average is not only far below the earnings for 1916 and 1917 but also far below the earnings of previous years.

Senator KELLOGG. How many years does that cover?

Mr. KRUTTSCHNITT. From 1900 to 1917; the figures taken from this report of the Interstate Commerce Commission; and in that connection I would call your attention to some misleading figures.

Take, for instance, the line for 1916 in the report of the Interstate Commerce Commission for 1917. The income from operation is divided by the mileage—257,544—to deduce columns I and J, the average income per mile—adjusted.

The book cost of road and equipment is divided by a mileage of 239,392 to obtain the average cost per mile of \$73,209. The mileage used in this case is nearly 20,000 less than that first used and must therefore give too large a result when the rate of return is computed. The difference in mileage seems to be due to the omission of class II and class III roads, which embrace a mileage of about 27,000. They constitute 12 per cent of the mileage of class I roads but produce but 2.7 per cent of the revenue.

That may seem unintelligible orally, but with these statistics before you, I think it will become clear; I think all the members of the committee have this report, or will have it.

The other feature to which I desire to direct attention is this: That if the guaranty is based on the net income for the three years ending June 30, 1917, much of the additional money put into the properties since 1915 will not be allowed any return unless the bill be modified; nor will there be any return from the money put into the properties since the 30th of June, 1917, up to the 28th of December, when the roads were taken over by the Government; that is, the roads taken over by the Government on the 28th of December had a mileage of between two and three thousand miles more than they had in 1915, and had an investment of about \$750,000,000 of money more on the 30th of June, 1917, than they had in 1915 plus the additional money put in since the 30th of June, 1917, up to the 28th of December, 1917.

Senator POINDEXTER. Have you estimated how much that was, that last item?

Mr. KRUTTSCHNITT. Not yet. The reports of the roads are not in for December. I think the roads do not have their accounts in for from 25 to 30 days after the close of the month; so it would be very nearly the 1st of February before the most diligent roads would have their returns in.

Senator POINDEXTER. And you have not estimated that approximately—the amount?

Mr. THOM. May I answer that? We have a witness here who will appear before you, who has estimated that, or approximated it.

Mr. KRUTTSCHNITT. This [indicating] would not approximate it. I was going to say I had multiplied the commission's estimate of the cost of the roads by the mileage. That is only up to the 30th of June, so my answer to your question may stand—I have not made any approximation.

The CHAIRMAN. Is there any other feature of the bill that you care to discuss?

Mr. KRUTTSCHNITT. I do not think of anything else.

Senator POINDEXTER. May I ask you a question? I was not in when you began your testimony, and perhaps you have already touched upon it. Your objection is to the taking of the three years 1915, 1916, and 1917 as a basis of compensation?

Mr. KRUTTSCHNITT. Rather to the inclusion of 1915 as one of the three years.

Senator POMERENE. I was going to ask what method of compensation you would propose in lieu of this?

Mr. KRUTTSCHNITT. The method is all right; quite all right, with the omission of 1915, which was abnormal.

Senator POMERENE. How would the earnings of 1915 and 1916 compare with the three or four years immediately preceding 1915, to which you object?

Mr. KRUTTSCHNITT. I do not object to the years preceding 1915. I objected to the year 1915 being included in the group of three years on which the guaranty was to be based. I said nothing about the years preceding 1915.

Senator POMERENE. Do I understand, then, that you would be satisfied with some of those years preceding 1915 as a basis?

Mr. KRUTTSCHNITT. No; the guaranty ought to be made as nearly as possible to cover the period immediately preceding the time of taking over the properties by the Government. If you take a period too far back, and then study the property, it will be a different, a very different, property from the one which you took over. If you took the two years I suggest, they would run back to two and a half years preceding the taking over by the Government.

Senator POMERENE. Now then it is your thought, I take it, that the method of compensation should be based entirely upon the earnings immediately preceding the taking over by the Government?

Mr. KRUTTSCHNITT. I would discriminate between methods and details of the method. I started out by saying that the President's method seemed to me quite all right and not to be criticized, but I thought the inclusion of 1915 in the test period that he takes, would be unfair to the carriers.

Senator POMERENE. Have you made a computation which would enable you to state to the committee what would be the difference in the compensation based upon the President's plan and that plan as modified by the elimination of the year 1915?

Mr. KRUTTSCHNITT. I can show you that on that diagram, I think.

Senator POMERENE. I mean in figures—or go ahead in your own way and answer the question.

Mr. KRUTTSCHNITT. I will answer first by reference to this diagram and then I will give you the figures from the Interstate Commerce Commission report. These, as I said, are the rates of return on the cost of road and equipment for those years from 1900 to 1917, taken from the commission's report, this last one being corrected only because of the fact that they have omitted class 2 and class 3 roads from the mileage in their divisor; in other words, their divisor was much too small. Here is the average of the three years; here is 1915, 1916, and 1917. The period would be 5.26. This is 5.2 and this is 5.3—5.26 is the average. This average is much less than 1916 and 1917 and it is very much less you see than in 1910 and 1909, than

1907, than 1906, and it is very little more than 1903, which is about 5.2 This line [indicating] is the average line.

Now, to answer your question in figures, the income from operation as given by the commission in 1915, was \$728,000,000; in 1916, \$1,043,000,000; in 1917, \$1,069,000,000.

The average is 947.

Mr. THOM. The Senator wants to know how much less that is than the average for two years.

Mr. KRUTTSCHNITT. \$109,000,000.

The CHAIRMAN. How would the net earnings in 1914 in relation to capital invested, compare with the capital and earnings of 1916 and 1917?

Mr. KRUTTSCHNITT. Do you say in 1914?

Senator POMERENE. Yes; the prewar years, to June 30, 1914.

Mr. KRUTTSCHNITT. These figures, of course, are all for the year ending June 30.

Senator POMERENE. I said June 30, 1914, which would be the fiscal year 1913 to 1914.

Mr. KRUTTSCHNITT. The income from operation is given at \$704,000,000 against \$728,000,000 for 1915.

Senator POINDEXTER. What is it for 1916?

Mr. KRUTTSCHNITT. \$1,043,000,000.

Senator POINDEXTER. What year did the British Government take as the basis for compensation?

Mr. KRUTTSCHNITT. The year immediately preceding the war. The war broke out, as I say, substantially on the 1st of August, 1914, and they took the calendar year, as I remember it, 1913.

The CHAIRMAN. Have you any further information that you would like to give the committee?

Mr. KRUTTSCHNITT. I think not.

The CHAIRMAN. Does any member of the committee desire to ask questions?

Senator CUMMINS. Mr. Chairman, I have some questions that I want to ask. Mr. Kruttschnitt, the President in his message, and the bill we have before us, use the phrase, "Net railway operating income." Do you understand that that is the equivalent of the phrase, "Railway operating income," as used by the Interstate Commerce Commission in its reports and computations?

Mr. KRUTTSCHNITT. No, sir; the net railway operating income is quite well understood from the blanks that the commission sends out for the railroads to report upon. The net railway operating income is the gross revenue less the operating expenses, less taxes, and plus or less a number of items, the principal one of which is rental of equipment.

Senator CUMMINS. How do you arrive then, taking the commission's report, at the net railway operating income?

Mr. KRUTTSCHNITT. By the headings that they use. The heading used in their annual report before me is "Income from operation," and that is operating revenue less operating expenses, less taxes. The term "Net railway operating income," my recollection is, is used in the bill and is also used by the President.

Senator CUMMINS. The commission has furnished the committee recently a table showing the railway operating income, the aggregate

of all the railways known as class I, and for the year ending June 30, 1917, the amount is stated, as \$1,061,814,427. Is that the sum which in your opinion is referred to by the President in using the phrase, "Net railway operating income"?

Mr. KRUTTSCHNITT. Without seeing the items I could not say for certain, but I think it is. The figure given in the report here for "Income from operation," which is simply the revenues less expenses and taxes, is \$1,069,000,000. That differs by \$8,000,000 only from the figure that you have read.

Senator CUMMINS. The commission separates the corporate income and makes part of it the income from operation, and part of it the income from other sources; but if the phrase, "Net railway operating income," is understandable at all with reference to the phraseology used by the Interstate Commerce Commission, it means the income from operation, or the revenue from operation, less the cost of operation, maintenance, and taxes.

Mr. KRUTTSCHNITT. No; and it is proven by the figures which you read, which are \$8,000,000 less than the ones I read. That \$8,000,000 evidently covers car rentals, and these other small items that I have spoken of.

Senator CUMMINS. Has the Interstate Commerce Commission any table in its report which it calls "Net railway operating income"?

Mr. KRUTTSCHNITT. Yes; this table is the one given to all the roads on which to send in their reports, as you can see by reference to it.

Senator CUMMINS. It is a copy of the monthly report, or the blank on which the monthly report of the railway companies is made?

Mr. KRUTTSCHNITT. Yes, sir; they are required to report monthly. You will find items numbered there 1 to 31. The items included from 1 to 8 are operating revenues; items 10 to 16 include operative expenses; income items are those from 19 to 25; and the net railway operating income are items 21 to 25. You can see that 21 is railway operating income. I think that is the figure you first mentioned.

Senator CUMMINS. Will you then state, with your understanding of the meaning of the term "net railway operating income," what the net railway operating income of all the railways in the United States was for the year ending June 30, 1917?

Mr. KRUTTSCHNITT. I do not think I have that before me, because in this commission's report they do not give it. They give simply the income from operation, which would be line 21 on the blank that you have in front of you.

Senator CUMMINS. I am trying to find out, if I can, how much we guarantee the railway companies in the aggregate if the plan of the bill is adopted; how much in the aggregate do we guarantee the railway companies shall receive each year? In order to begin that inquiry, we have got to know what the net railway operating income for the year ending June 30, 1917, is.

Mr. KRUTTSCHNITT. They are the figures given on pages 36 and 37 of this annual report of the commission, less about \$8,000,000, judging by the figures that you read out, as net operating income for 1917. I can not give you the figures for the net operating railway income, because I have not got them.

Senator CUMMINS. And for the year ending June 30, 1916, the amount given us by the commission as the railway operating income

is \$1,024,381.299. Now, how would you treat that in order to arrive at the net railway-operating income?

Mr. KRUTTSCHNITT. You have given it already. The net railway operating income must be meant as income from operation is given in the report as \$1,043,839,822.

Senator CUMMINS. The commission has furnished it under the heading "Railway operating income," and the President and the bill introduced the word "net," and I want to know what difference, if any, that makes in the total?

Mr. KRUTTSCHNITT. You will then have to subtract from or add to the figures which the commission gave you the items which they have marked here 22, 23, 24, and 25; that is, equipment rents, joint-facility rents, leased-road rents, and miscellaneous rents.

Senator CUMMINS. You would have to subtract those items, unless the revenues of a particular railway company from the same items was larger than its disbursements; but if it were, you would add instead of subtract?

Mr. KRUTTSCHNITT. You would add or subtract, as the case might be, if there was a deficit.

Senator CUMMINS. Can you tell the committee how much ought to be added or subtracted to or from the item that you have just given as the railway operating income for the year ending June 30, 1916?

Mr. KRUTTSCHNITT. I can not with these commission figures only before me.

Senator CUMMINS. Whatever it may be, it is not large either way, I assume. It bears about the same relation to the railway operating income the same item for 1917 bears to the figures that you have given me?

Mr. KRUTTSCHNITT. Taking the figures you have given me, there is a difference of \$8,000,000 in one case and \$20,000,000 in another.

Senator POINDEXTER. I would like this table, Mr. Chairman, put in the record—the one that the witness has been testifying about.

Senator CUMMINS. It is simply a blank on which the railway companies make their monthly reports.

Senator POINDEXTER. Mr. Kruttschnitt has testified to a series of items on that blank, and his testimony would be unintelligible unless that statement is printed.

The CHAIRMAN. Without objection, that will be incorporated in the record.

(The blank is here printed in full, as follows:)

Bureau of Railway Economics, Washington, D. C.

Monthly report of revenues and expenses.

NAME OF COMPANY _____, MONTH _____.

For the month of.....			Item.	For the months ending with		
1917	1916	Increase (in black) or decrease (in red).		1917	1916	Increase (in black) or decrease (in red).
			OPERATING REVENUES.*			
.....	1. Freight (Accounts 101 and 121).....	.....	.....	.....
.....	2. Passenger (Accounts 102 and 122).....	.....	.....	.....
.....	3. Mail (Accounts 106 and 125).....	.....	.....	.....
.....	4. Express (Accounts 107 and 126).....	.....	.....	.....
.....	5. All other transportation.....	.....	.....	.....
.....	6. Incidental (Accounts 131 to 143).....	.....	.....	.....
.....	7. Joint facility—Cr. (Account 151).....	.....	.....	.....
.....	8. Joint facility—Dr. (Account 152).....	.....	.....	.....
.....	9. Railway operating revenues (Account 501).....	.....	.....	.....
			OPERATING EXPENSES.*			
.....	10. Maintenance of way and structures (Accounts 201 to 279).....	.....	.....	.....
.....	11. Maintenance of equipment (Accounts 301 to 337).....	.....	.....	.....
.....	12. Traffic (Accounts 351 to 359).....	.....	.....	.....
.....	13. Transportation (Accounts 371 to 420 and 431 to 433).....	.....	.....	.....
.....	14. Miscellaneous operations (Accounts 441 to 446).....	.....	.....	.....
.....	15. General (Accounts 451 to 462).....	.....	.....	.....
.....	16. Transportation for investment—Cr. (General account VIII).....	.....	.....	.....
.....	17. Railway operating expenses (Account 531).....	.....	.....	.....
			INCOME ITEMS.			
.....	18. Net revenue from railway operations (Item 9 less Item 17).....	.....	.....	.....
.....	19. Railway tax accruals (Account 532).....	.....	.....	.....
.....	20. Uncollectible railway revenues (Account 533).....	.....	.....	.....
.....	21. Railway operating income (Item 18 less Items 19 and 20).....	.....	.....	.....
.....	22. Equipment rents (Accounts 503 to 507 and 536 to 540, net).†	.....	.....	.....
.....	23. Joint facility rent (Accounts 508 and 541, net).†	.....	.....	.....
.....	24. Leased road rent (Accounts 509 and 542, net).†	.....	.....	.....
.....	25. Miscellaneous rents (Accounts 510 and 543, net).†	.....	.....	.....
.....	26. Net railway operating income (Items 21 to 25).....	.....	.....	.....
			AVERAGES.			
.....	27. Average operating revenue per mile of road operated.†	.....	.....	.....
.....	28. Average operating income per mile of road operated.†	.....	.....	.....
.....	29. Average net operating income per mile of road operated.†	.....	.....	.....
.....	30. Average number of miles of road operated.....	.....	.....	.....
.....	31. Number of miles outside the U. S., included in Item 30.....	.....	.....	.....

2. Investment in road and equipment at beginning of month (Account 701)..... \$.....

33. Improvements on leased railway property at beginning of month (Account 702)..... \$.....

* Includes figures for water lines, if any.

† Entries in red denote debits.

‡ Items 9, 21, and 26, respectively, divided by Item 30.

Senator CUMMINS. What we have said with regard to the railway operating income for 1916 and 1917 applies also to the same item for the year 1915, of course?

Mr. KRUTTSCHNITT. Yes.

Senator CUMMINS. Now, Mr. Kruttschnitt, let me ask—

Mr. THOM. Before you pass from that, Senator, you appreciate the provisions of the bill which seeks to put other items back into that?

Senator CUMMINS. I will come to that presently. Disregarding these minor differences between net operating income and railway operating income, I find that the railway operating income for the class I roads—and we all understand what the class I roads are—roads that have a gross revenue above \$1,000,000—

Mr. KRUTTSCHNITT. Yes.

Senator CUMMINS. And that they constitute 97 per cent of the railway revenues?

Mr. KRUTTSCHNITT. Ninety-eight.

Senator CUMMINS. The aggregate for the three years to which you have referred is \$2,802,671,912. Would it be fair to add to that aggregate 3 per cent as representing the class II and class III roads, which are not included in the table?

Mr. KRUTTSCHNITT. The commission's report gives that as 2 per cent. I know it is not figured out anywhere, but by taking their figures in 1916, where they give the revenues from classes I, II, and III.

Senator CUMMINS. The commission reports to the committee as follows:

Class II roads are roads having annual operating revenues over \$1,000,000. They comprise about 97 per cent of the total operating revenues and 92 per cent of the total operated mileage of the United States.

Now, if I add 3 per cent to that, as being a fair statement, as based on the report of the commission, we have a total aggregate of railway operating income, \$2,886,752,069, an average in not over three years, as suggested by the President, the annual guaranty of payment for the use of the property would be \$962,250,689. If that does not accord with your statement as to the figures, I wish you would point out the discrepancy.

Mr. KRUTTSCHNITT. Of course, Senator, you understand the statement as to figures is based altogether upon the printed report of the commission. I am only acting as the mouthpiece by reading out this statement. The average as read out by you is \$15,000,000 greater than the income from operation given by the commission in their printed report for the three years. That, as I stated before, is of course due to taking account of the items that I read out just now.

Senator CUMMINS. This does not include the revenues of railway companies from sources other than operation?

Mr. KRUTTSCHNITT. So I understand; in other words, it does not take in the income from any other source than the operation.

Senator CUMMINS. I observe that the bill under consideration provides:

Said net railway operating income for the purposes of this act shall, as to carriers making returns to the Interstate Commerce Commission, be computed from such returns, excluding, however, debits and credits arising from the accounts called in the monthly returned leased-road rent and miscellaneous rent.

Now, what difference, if any, will that proviso make in the aggregate of the figures that I have presented to you?

Mr. KRUTTSCHNITT. It makes just the difference that I mentioned—about \$15,000,000. There is really, then, a contradiction in the bill which I had not noticed, as it says “net railway operating income,” and afterwards says it is not to take account of leased-road rents and miscellaneous rents. Then it is not net railway operating income as it is considered by the commission.

Senator CUMMINS. I was endeavoring to reach that point.

Mr. KRUTTSCHNITT. You are right on that.

Senator CUMMINS. But even ignoring that inconsistency, the qualification I have just read would make no greater difference in the aggregate than you have already pointed out?

Mr. KRUTTSCHNITT. No, sir.

Senator CUMMINS. So that, reduced to its concrete terms, the proposition of the President and of this bill means a guaranty of an income to all the railways after all cost for maintenance, operation, etc., is paid, and also taxes, of somewhere around \$950,000,000 to \$960,000,000?

Mr. KRUTTSCHNITT. I so understand.

Senator CUMMINS. You have stated that you thought the year 1915 ought to be excluded from the years over which the average is made because it is an exceptional year; that is, you mean by that that the business carried by the railway companies was exceptionally small?

Mr. KRUTTSCHNITT. And the business of the country was exceptionally bad.

Senator CUMMINS. Of course, the final interest of the committee, if it has any interest in this inquiry, is as it affects the railways, and it reduces the volume of business done by the railway companies, and your income was correspondingly decreased.

Mr. KRUTTSCHNITT. Yes, sir.

Senator CUMMINS. Do you not think that the reasons which you have given for the conclusion that the year 1915 was an exceptional year apply with equal force with 1916 and 1917?

Mr. KRUTTSCHNITT. As being exceptionally good?

Senator CUMMINS. Certainly. Are those years not just as exceptional as the year 1915, although in the one case the business was bad and in the other case the business was good?

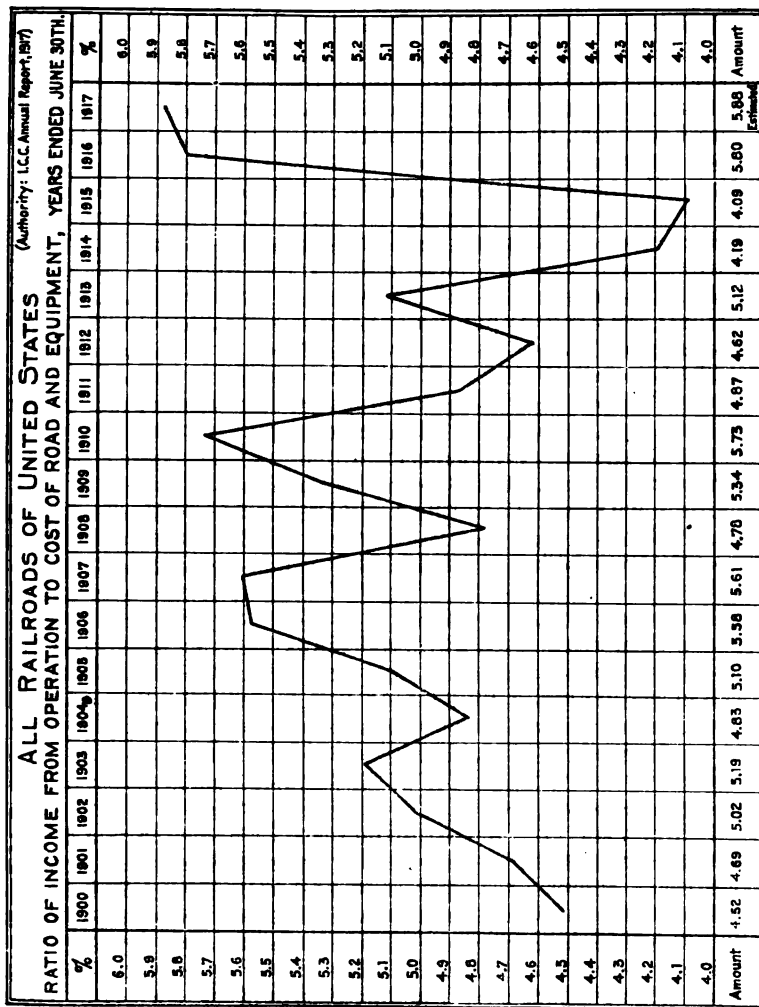
Mr. KRUTTSCHNITT. No; I tried to show that on that blue-print diagram, as you have it there. You take the general trend of the operations of the roads as indicated by the best years. Take 1906, 1907, and 1910. There is a gradual increase in the earnings which, if produced, would strike about where 1916 and 1917 come. The operations of 1915 were exceptionally low, but those of the preceding years were not exceptionally high; in other words, during the three or four years preceding 1915 the railroad earnings were very low, and the general increase was lumped back to what there should be in 1916 and 1917. You can see by laying a sheet of paper on it, from 1917 back to this point, that the rate of progress is reasonably constant.

Senator CUMMINS. That chart will be in evidence, I suppose.

Mr. KRUTTSCHNITT. Yes, sir.

The CHAIRMAN. Without objection that will be inserted into the record.

(The chart referred to is here printed in full, as follows:)



SENATOR CUMMINS. Considering the years 1912, 1913, 1914, 1915, 1916, and 1917, can you name a normal year?

Mr. KRUTTSCHNITT. Starting with 1912?

Senator CUMMINS. Yes; starting with 1912.

Mr. KRUTTSCHNITT. No; I do not suppose you could call any of those years normal.

Senator CUMMINS. Are they all, except 1916 and 1917, below the normal, or are some of them above the normal?

Mr. KRUTTSCHNITT. Well, they were all pretty bad years—1914 and 1915 particularly bad, 1915 worse than any.

Senator CUMMINS. Well, I will take 1912 as an illustration. In 1912 the railway operating income, according to the report furnished by the commission, was \$736,466,326. Now, what was the book value of all the railroads of the country for that year?

Mr. KRUTTSCHNITT. \$15,874,000,000.

Senator CUMMINS. Now, what was it for the year 1917—I mean, always ending on June 30?

Mr. KRUTTSCHNITT. That is not given, but the commission does give the book cost per mile. Multiplying that backward by mileage—

Senator CUMMINS. You have it for 1916, have you not, the book value?

Mr. KRUTTSCHNITT. Yes, sir; that is in here.

Senator CUMMINS. What was it?

Mr. KRUTTSCHNITT. \$17,525,000,000.

Senator CUMMINS. What was the amount added to the railroad properties from 1912 to 1916, so we will have it in the record?

Mr. KRUTTSCHNITT. \$1,651,000,000.

Senator CUMMINS. What percentage of increase is that?

Mr. KRUTTSCHNITT. Ten and four-tenths.

Senator CUMMINS. Ten per cent, do you mean?

Mr. KRUTTSCHNITT. A little over 10 per cent.

Senator CUMMINS. Then the railway operating income for 1916 was \$1,024,381,299, and for 1912 it was \$736,465,326, the difference between the two being \$288,115,973. What percentage of increase is that?

Mr. KRUTTSCHNITT. For 1912?

Senator CUMMINS. Yes; 1916, as compared with 1912? It is considerably over 33 per cent, is it not?

Mr. KRUTTSCHNITT. I understood you to read the figures for 1912 as being substantially \$736,000,000.

Senator CUMMINS. \$736,465,000.

Mr. KRUTTSCHNITT. And for 1916, \$1,024,000,000.

Senator CUMMINS. Yes.

Mr. KRUTTSCHNITT. That is an increase of about 39 per cent.

Senator CUMMINS. If your railway operating income, comparing the two years, increased 39 per cent, and your investment increased only 10 per cent it would be fair, would it not, to assume that 1916 was an exceptional year?

Mr. KRUTTSCHNITT. If 1912, the basic year from which you start, had been a fair year, that conclusion would be correct. Nineteen hundred and twelve, however, was a year of very poor returns.

Senator CUMMINS. I have not the figures for any year back of the two just before me, but if it occurs to you to institute some comparison between 1916 and any year prior to 1912, it might furnish some information. I do not know what would be the result, but we have got to find a normal year somewhere, some time.

Mr. KRUTTSCHNITT. The farther back you go, however, the more you depart from the condition of the properties that you take. Nineteen hundred and twelve is five and one-half years back from the period at which the Government takes these properties, and as I have said 1912 itself was quite a low year.

Senator CUMMINS. Do not understand me, Mr. Kruttschnitt, to approve of the standard that has been suggested in the bill at all. I

am trying simply to find out why you exclude 1915 on the ground that it was an exceptionally bad year and insist upon 1916 and 1917, which, according to the same standards, were exceptionally good years.

Mr. KRUTTSCHNITT. The object of presenting you with this diagram was to have the facts before you that 1916 was not a year abnormally better than the preceding year, as 1915 was abnormally worse than the preceding year.

Senator CUMMINS. It was abnormally better than 1912, evidently.

Mr. KRUTTSCHNITT. Very much, because 1912 itself was a very, very bad year.

Senator CUMMINS. And abnormally better than 1914?

Mr. KRUTTSCHNITT. For instance, if you take the proposition of getting some gauge of what "abnormal" means, if you take the percentage of the returns as given by the commission, the percentage of returns for 1916 was 5.8 per cent, and for 1910 it was 5.73 per cent. In other words, there is no very material difference between those years, and between 1910 and 1916 there was an amount of money considerably exceeding the \$1,651,000,000 that we figured out just now, put into the properties.

Senator CUMMINS. Yes, but 1914 is the worst year you have had for the last 10 years, is it not, proportionately?

Mr. KRUTTSCHNITT. 1915, you mean?

Senator CUMMINS. I mean 1914 is the poorest year that the companies have had in many years, everything considered.

Mr. KRUTTSCHNITT. It is the worst year since 1900—of all the years put on this chart.

Senator CUMMINS. That is 1914 you are talking about?

Mr. KRUTTSCHNITT. Yes; 1914 was worst up to that period, and 1915 was worse still.

Senator CUMMINS. But the President does not propose to go back to 1914. He stops with 1915.

Mr. KRUTTSCHNITT. Except that 1914 is a little better than 1915, or rather not quite so bad as 1915.

Senator CUMMINS. Well, on the contrary, it—I do not know how much was added to the property, but according to the table furnished us by the commission, the railway operating income for 1914 was \$692,340,572, which is \$45,000,000 less than it was for 1915.

Mr. KRUTTSCHNITT. The report before me gives \$704,685,000 and \$728,212,000, respectively, but take into account the money that was put in in that year, the commission itself says that the returns on the property in 1914 was 4.2 per cent while in 1915 it was 4.09.

Senator CUMMINS. They say that 1914 was a worse year than 1915?

Mr. KRUTTSCHNITT. No.

Senator CUMMINS. Well, 4.09 as compared with 4.2 is certainly the worse year. I may have your figures wrong.

Mr. KRUTTSCHNITT. Well, the greater the return the better the year, naturally.

Senator CUMMINS. That depends upon the value of the property upon which the return is made. What was the addition to the property according to the book investments between 1914 and 1915?

Mr. KRUTTSCHNITT. \$311,000,000.

Senator CUMMINS. Mr. Chairman, I think that is all I care to ask.

Senator LEWIS. Mr. Chairman, may I suggest for my own information, a matter upon which I am considerably bewildered in these interrogations. Mr. Kruttschnitt, in Senator Cummins's query about the less expense of operating the roads, considering the final sum for any year, is the amount of money paid out as interest on bonds included in that figure?

Mr. KRUTTSCHNITT. In the figures that we have been discussing?

Senator LEWIS. Yes; the figures with which you responded to Senator Cummins's question as the net expenditure of the railroads.

Senator CUMMINS. I may state that I did not intend it so.

Mr. KRUTTSCHNITT. No, sir; it is not, nor in any of these figures discussed.

Senator UNDERWOOD. You asked the question——

Senator LEWIS. Pardon me. Is the interest then on the general debt, what you would call a funded debt of the railroad—is that included in those words "net expenses of operating roads"?

Mr. KRUTTSCHNITT. No, sir.

Senator UNDERWOOD. If you did state it, Mr. Kruttschnitt, it did not strike my mind, at least I did not grasp. I understand you are making suggestions as to what would be a just compensation to the railroads, due to the fact of their being taken over by the Government, and as I understand your proposition it is in lieu of all damages, if this agreement is entered into. That is the basis of your statement, is it not?

Mr. KRUTTSCHNITT. As far as our road is concerned individually, and I believe I can say as to all other railroads in the country—if they enter into this agreement with the Government they would be estopped from claiming any other compensation, because they would be making this agreement voluntarily.

Senator UNDERWOOD. As the measure of compensation for taking over and controlling their property?

Mr. KRUTTSCHNITT. Yes, sir.

Senator UNDERWOOD. Now I would like to ask you—and if you stated it before, I did not catch it——

Mr. KRUTTSCHNITT. Excuse me, that is on the assumption, of course, of the point that the President made clear, both in his proclamation and in his message, that the roads were kept up in their usual proper standard; in other words, that the Government should not, under its leasehold, or control, or whatever you may call it, permit the standard of the roads to go down.

Senator UNDERWOOD. In other words, there are as many cars and as many engines to be returned to you, and in as good condition as the Government took them, and in your terminal facilities rails and trackage should be in as good condition?

Mr. KRUTTSCHNITT. Yes, sir; the roads and service maintained as they were when they took them over.

Senator UNDERWOOD. I understand the bill provides for that, in addition to this compensation?

Mr. KRUTTSCHNITT. It does not provide in addition to it, I think. I am not familiar enough with the bill to state accurately, as I have only read it twice.

Senator UNDERWOOD. I think I can call your attention to the clause. Here is what it says:

During the period of such Federal control adequate depreciation and maintenance of the properties of the carriers shall be included as part of the operating expenses or provided through a reserve fund, in accordance with such principles and rules as shall be determined by the President.

That contemplates that the Government shall keep the properties in as good condition as they were when they were taken over, and if it does not I would be glad to have your views upon it—if that does not provide for it or if the language in this bill does not cover that case.

Mr. KRUTTSCHNITT. I think it does fairly, using the word "adequate." I would not consider the term "adequate" fair. It should be that the maintenance of the properties should be equally as good as the private owners prescribed themselves.

Senator UNDERWOOD. Now, aside from the question of maintenance, and looking entirely to a just compensation for the taking over of the property and the control of it during this period, what do you say would be a just basis of compensation?

Mr. KRUTTSCHNITT. Exactly the basis described by the President, and excluding 1915, an altogether abnormal year. In making any study of averages, any one term making up the average that is abnormal is always excluded, else it does not give a fair average.

Senator UNDERWOOD. You think an offer of that kind by the President of your road would be acceptable to your stockholders and that they would be willing to accept it and not go into the courts and sue for just compensation provided by law?

Mr. KRUTTSCHNITT. Before answering that I must say that my answer would perhaps be misleading if it is confined to any one road.

Senator UNDERWOOD. I was speaking of your road.

Mr. KRUTTSCHNITT. The remarks that I have made, or what I have said here, would apply to the roads of the United States generally. Our road has been exceptionally fortunate in the last two years in having no congestion and being able to write more of its gross revenue as income than most roads. As to the Southern Pacific, those figures would be—although 1915 was abnormally low, 1916 better, and 1917 better—not as unfair as to roads generally.

Senator UNDERWOOD. But so far as your road is concerned, and its stockholders, you think that an agreement such as you suggest would be concurred in by your stockholders in lieu of all damages for taking over the roads?

Mr. KRUTTSCHNITT. Of course, I can not predict; I can only give my opinion.

Senator UNDERWOOD. That is what I am asking for.

Mr. KRUTTSCHNITT. As the board of directors would probably authorize such an agreement, and would recommend it to the stockholders for approval, my opinion is they would probably approve it. I think with any fair basis that would be the case with nearly all the roads of the country. There are some 650 to 750 different railroads to make this agreement, if the method is fair; if the details of carrying out the method are also fair, I do not think there would be any difficulty in getting all the roads of the country to make this voluntary agreement with the Government, perhaps, however, with the

exception of some roads that could not be covered in any general arrangement; in other words, that conditions might be so exceptionally bad that they would have to appeal to the Government for relief under the proper clauses in this bill.

Senator TOWNSEND. Do you not believe that the years 1916 and 1917 were abnormally prosperous years?

Mr. KRUTTSCHNITT. 1916 was, I should say, a fairly prosperous one; 1917 has not been as much so, because it has cost most of the roads of the country—particularly the eastern roads—from \$1.15 to \$1.20 to earn a dollar. Of course the more dollars of that sort that they earn the worse off they are, and the history of roads generally has shown a remarkable increase in gross revenues, with equally remarkable decreases in income; in other words, they have been going from bad to worse in 1917.

Senator TOWNSEND. Have you ever had any better years for your road than 1916 or 1917?

Mr. KRUTTSCHNITT. I want to repeat that our road and one or two other roads in the far West have been in an entirely exceptional class this year. I would answer the question that you ask; no. We have never had any better years than 1916 and 1917.

Senator TOWNSEND. Then you object to 1915 because it was abnormally low. Then, as far as your road is concerned, would not 1916 and 1917 be abnormally high, and therefore an unfair basis upon which to fix your compensation?

Mr. KRUTTSCHNITT. Possibly; you can get exceptions. I say I do not think you can find any basis that will apply equally fairly to all the roads in the country.

Senator TOWNSEND. You say you do not think any can be obtained. You know of no plan that would be better than this, do you?

Mr. KRUTTSCHNITT. No, sir; I have said several times that I think the President's plan and his methods were altogether good and fair.

Senator TOWNSEND. You believe, however, in taking an average of some term of years?

Mr. KRUTTSCHNITT. I think you ought to take the years, as nearly as possible, to the date on which you take the properties, else you impress a property which is vastly better than the property you pay for.

Senator TOWNSEND. You do not think it would be fair under any circumstances to use, as a general rule, the year 1917—the fiscal year 1917—as a basis?

Mr. KRUTTSCHNITT. Speaking for all the roads of the country—and I am doing that now—I do not think that 1917 would be fair on account of the congestion and the expenses that have increased more rapidly than the gross revenues. They have not only kept nothing of their increased revenues, but they have had to take money from somewhere else to pay the expenses.

Senator TOWNSEND. What assurance have we, or have you, that that same abnormal expense would not continue during the war—next year, for instance, and the year after, possibly?

Mr. KRUTTSCHNITT. Absolutely none.

Senator TOWNSEND. Well, if you take it back over some other period that was not affected by the war, is it not possible that the railroads might obtain a larger compensation under this proposed method than they would be entitled to?

Mr. KRUTTSCHNITT. If you take the period antedating the war, the conditions are so entirely different that they are not at all comparable with the conditions to-day; or, to answer you in another way, any period of years that you take is a gamble—a gamble on the part of the Government that they won't have to pay any guaranty, and a gamble on the part of the carriers that the guaranty will be better than the earnings they might have made if they had not been under Government control.

Senator TOWNSEND. I thought this morning that Mr. Thom expressed the principle which seemed to me to be absolutely correct—the Government should pay the railroads the actual value for their use during the time it has them, and that is better determined, possibly, by a period most closely approximating the time when they are to be used by the Government. But I have heard a good many suggest 1917, which is the closest period that could possibly be used, was unfair because some of the reasons which you have stated, but not being able to see in my own mind why that unusual condition as to expenses will not maintain during the next year the same as it has in the past, it would be quite fair for the Government to guarantee profits which you, yourself, must admit are not likely to occur, especially on a good many of the roads.

The CHAIRMAN. Are there any other questions?

Senator LEWIS. Mr. Chairman, Senator Underwood, assuming that I had concluded, addressed an inquiry to the witness, which, if I may be permitted, with Mr. Kruttschnitt informing me, I would like the privilege for just one moment to pursue in order to enlighten myself. Mr. Kruttschnitt, Senator Underwood propounded to you a query as to what your opinion was as to a fair compensation, and as to your road accepting the proposed compensation in the form of the express compensation under the bill as it is framed. Mr. Kruttschnitt, I belong to the few men on this committee who have been advocates of the Government taking these roads as a Government agency—as an agency of the Government—the question of operating to be left to the second proposition as to who shall operate them, the Government or private persons. It is my purpose somewhere along in this transaction, no doubt, to again urge it, either in connection with this bill or in the other measure that has been long pending, with that in view. In view of your reply to Senator Underwood, that the form of compensation suggested in this bill would be satisfactory to the stockholders for the length of time and under the method predicated in the bill, might I ask you to tell us if it would be a fair compensation on the same basis if the Government permanently kept the roads?

Mr. KRUTTSCHNITT. Certainly not. I assume that the directors, and especially the stockholders would all submit to a good deal of inconvenience and a good deal of sacrifice from patriotic motives to support the President in the defense of the country, and to win this war, but I am not prepared to say that I would be willing to accept the compensation as a permanency. We railroad men have been, and I expect you gentlemen have all been, in a perfect whirl for the last six months. We have not had time to think clearly on one subject before another one came up, and personally I should advocate to our shareholders any reasonably fair arrangement with the Government, and not discuss it and argue it in the midst of a time of

national peril. When it comes to the matter of taking our properties permanently, I would have to do a good deal more thinking than I have done.

Senator LEWIS. I will not divert the query longer with any further questions.

Senator KELLOGG. This guaranty, Mr. Kruttschnitt, of course if enacted will be the guaranty to each separate railroad; it will not be an aggregate guaranty to all the railroads?

Mr. KRUTTSCHNITT. So I understand; there will be an agreement, as I understand it, between each carrier corporation and the Government.

Senator KELLOGG. But any railroad not desiring to make the agreement and not being satisfied with the guaranty would have the right to have damages assessed, and the Government asked to pay them under this bill?

Mr. KRUTTSCHNITT. So I understand.

Senator KELLOGG. So the result may be that roads which are willing to accept the guaranty of the bill will accept it at once, of course, and other roads may not accept it, but sue the Government for damages?

Mr. KRUTTSCHNITT. Yes, sir.

Senator KELLOGG. Have you prepared any statement showing the property investment of each separate road, the capitalization of each separate road, and net operating income of each separate road, and the ratio of net operating income to property investment, and the ratio of net operating income to capital invested?

Mr. KRUTTSCHNITT. I think I have a copy of that statement.

Senator WATSON. For what year?

Senator KELLOGG. For the years 1915, 1916, and 1917. I simply wish to ask if you purpose to put such a statement into the record?

Mr. THOM. We do, but not by this witness.

Senator KELLOGG. Very well, I will not go further with that. The only evidence we have as to the valuation of these properties is the book value or investment value appearing on the books and the capitalization, is it not? That is, there is no other evidence available to this committee that you know of?

Mr. KRUTTSCHNITT. No, sir; there is a valuation being made, but I do not know when it will be completed.

Senator KELLOGG. We understand that is not ready and will not be for at least two years.

Senator POINDEXTER. Do you include in capitalization the market value of the stocks as well as the par value?

Senator KELLOGG. No, sir; I include the book values of the properties as appearing on the books and the capitalization, which includes the par of the stock and indebtedness at par.

Senator POINDEXTER. Excluding the consideration of market value?

Senator KELLOGG. We have before us some evidence on the market value.

Senator POINDEXTER. But I mean in the plan that you state is your plan. I understood you to say that we have no other way of arriving at it.

Senator KELLOGG. I say we have no evidence before us of the valuation of property except as to the par from book valuation in the returns to the Interstate Commerce Commission and capitalization:

take capitalization as a market value or par value; I do not care; they both appear in evidence. Do you not think in arriving at the value of the use of each railroad separately we ought to have its earnings—its net earnings—to capital investment for each one of those years also?

Mr. KRUTTSCHNITT. Yes, sir; I think that has been prepared.

Senator KELLOGG. All right. Now, I notice in the testimony so far taken—for instance, take the year 1916. As I recollect, the net earnings of all the railroads in the United States in Class I, after the payment of all operating expenses, taxes, maintenance, etc., and after the payment of interest on funded debt and unfunded debt, was something slightly in excess of \$600,000,000 in the aggregate.

Mr. KRUTTSCHNITT. I have not the figures before me, Senator. This takes no account of the commission's figures of interest.

Senator KELLOGG. It was stated before the committee the other day that that would be between or in the neighborhood of 9 or 10 percent—I should say 9, from recollection—upon the total capital stock of all the railroads in the United States. But out of those net earnings there was only paid, as I recollect it, about \$281,000,000 of dividends in that year. I want to know whether it is a fact that much of the surplus appearing on the books of the railroads in the United States is actually invested in betterments and improvements of property and not on hand in the form of cash.

Mr. KRUTTSCHNITT. From my general knowledge of the situation I should say that substantially all of it except reasonable working funds—every road has to have a certain amount of working funds—that is, cash in bank or in securities that can be turned into cash very quickly, and substantially all the surplus has been invested in the properties.

Senator KELLOGG. Is it your opinion as a railroad man that it is good economics for the country to have a railroad pay out all its net earnings in dividends?

Mr. KRUTTSCHNITT. I should say it is absolutely indefensible.

Senator KELLOGG. You do not think a railroad should borrow all the money it puts into its properties, do you?

Mr. KRUTTSCHNITT. Certainly not.

Senator KELLOGG. Now, it was suggested the other day that if this guaranty was made on the net income that the entire guaranty might be used for payment of dividends.

Mr. KRUTTSCHNITT. The bill provides, I think, against that. It forbids it. However, if the bill does not, I think there are very few companies in the country that would undertake to substantially increase their dividends in those circumstances.

Senator KELLOGG. I notice in looking over the table of dividends for 1916, paid by each individual road, many of them paid very large dividends—at least some of them—and many of them paid no dividends. In comparing capital account of some of these roads with the book investment there seems to be a great discrepancy. For instance, I think I noticed one road with a capital of \$750,000 and an investment of \$45,000,000. That was a most extreme case.

Mr. KRUTTSCHNITT. Capital stock?

Senator KELLOGG. Capital stock at \$750,000 and a book investment of \$45,000,000, and the dividend was very large in that case. Do you

propose going into those individual cases and explaining, if it can be explained, the reason for the small capitalization and the large investment?

Mr. KRUTTSCHNITT. Certainly, if it is desired; I have no doubt that information can be worked up and furnished the committee. Of course, on your own statement of these facts, you would naturally expect a dividend of such amount that it would paralyze you; a road having an investment of \$40,000,000 or \$45,000,000 and only \$750,000 in stock! A very moderate return on the property value would be an immoderate return on the stock.

Senator KELLOGG. Probably your table, which Mr. Thom says you purpose introducing, will explain that. We have that information for 1914, 1915, 1916, for 88 roads, with the exception of the item of capital stock and bonds; that is, I have the property investment, but I shall not go into that now.

Mr. KRUTTSCHNITT. You see there are, in cases like that, the laws of the State under which the roads are incorporated, which frequently prescribe the amount of stock, and the amount of stock is very small. We have a number of roads that were built under separate charters that have substantially no stock and no bonds in them at all.

Senator KELLOGG. But the property investment is large.

Mr. KRUTTSCHNITT. The property investment is, in some cases, quite large.

Senator KELLOGG. Well, ultimately, as I understand Mr. Thom to say, there must be a commission or a court to fix the value of the use anyhow. The question is whether the valuation of that use should not be fixed as to all roads by the same commission, and with the right to review it in the courts, because Congress can not, apparently, without the consent of the roads, fix the compensation. Either you or Mr. Thom may express your views on that.

Mr. KRUTTSCHNITT. But is it not within your power to sanction beforehand such an agreement on such prescribed basic principles as the President might make, and engage to pay a guaranty that might have to be paid under his act?

Senator KELLOGG. Quite likely we could do that.

Mr. KRUTTSCHNITT. If an act providing for reasonable basic method of compensation should be approved by you—although you say you can not legally require the roads to accept it—it is a fact, I believe, that out of six or seven hundred corporations, probably 95 to 98 per cent would accept it, and instead of having these settlements dragged interminably through commissions and courts, you would dispose of nearly all of them at once; there would be exceptional cases only where an appeal would have to be made to this board of auditors prescribed in the bill, or the Court of Claims. It seems to me that Congress could provide or authorize the President to make such settlements as would practically wipe this whole thing out, with very few exceptions.

Senator KELLOGG. Your executive committee, which has represented the railroads during the last few months, I suppose has kept in touch with the most important roads in the United States, or their executive officers, have you not?

Mr. KRUTTSCHNITT. Yes, sir; we have tried to.

not say. I still believe you could not have any standard method of doing it that would not vary with different roads.

Senator KELLOGG. I suppose it is impossible to borrow money to any great extent in the market now by any road?

Mr. KRUTTSCHNITT. Well, impossible is a very inflexible word; but I should say you could not get it on any terms that you could afford to pay. Railroads could not get it in large sums; they could not afford to pay the terms.

Senator KELLOGG. That is all I care to ask.

Senator CUMMINS. Mr. Chairman, I have already interrogated the witness, and I do not want to do it again until all the rest have had a chance; but there are one or two questions that are suggested by the inquiry made by Senator Underwood that I would like to ask of the witness. I would like to say, in connection with the idea of Senator Underwood regarding the directors or shareholders, that I would, of course, expect them to raise the question of compensation for capital put into the properties since the 30th of June, 1917. Quite a good deal has gone in in the last six months. Some compensation should be accorded the capital that went in in the last half of the calendar year 1917.

Senator UNDERWOOD. Is there any provision in this bill as it stands now to cover that question?

Senator CUMMINS. I do not think so, but I think there should be.

Senator UNDERWOOD. Then, if there is no provision along that line, and we were to adopt the bill in its present form, you do not think it would be satisfactory to your directors and stockholders?

Mr. KRUTTSCHNITT. This was an afterthought. I said earlier in my testimony that I thought that there should be compensation given for capital that was put in after this test. When I answered you I was afraid, unless I made this explanation, that my answer would be considered too broad and not subject to what I said before about interest on money put into the property since the 30th of June, 1917.

Senator UNDERWOOD. The reason I asked you this question is that, I take it, if the Government had not taken over the railroads that, under existing law, the railroads are allowed to enter the Court of Claims and sue for a just compensation; that is the status that exists to-day if the Government has taken over the property. But we are considering the question of trying to avoid a lawsuit and trying to fix the status under which a lawsuit can be avoided and a present determination reached. Of course, if the terms of the bill are not broad enough within which the Government and the railroads can get together, then our legislation is futile and there is no use in proceeding with it; and that is the reason I asked the question, because I wanted to try to get from you the terms on your side of the question which you thought it would be possible for your stockholders to reach an agreement with the Government upon.

Mr. KRUTTSCHNITT. And I only made this remark to make my answer complete. It seemed to me it was not complete in the way I had given it before.

Senator CUMMINS. Inasmuch as the Southern Pacific has been mentioned, I would like to know what the plan of the bill will do for the Southern Pacific. Have you with you the railway operating income of the Southern Pacific—I do not mean the income—but have

Mr. KRUTTSCHNITT. I should say many roads; not a good many. I think it is true of the Burlington. I think it is true perhaps of the Northern Pacific and Atchison.

Senator KELLOGG. And the Great Northern?

Mr. KRUTTSCHNITT. And the Great Northern and some of the eastern roads.

Senator KELLOGG. Some of them require additional capital, do they not?

Mr. KRUTTSCHNITT. The roads, Senator, are a good deal like individuals. We have told our people, "You must treat the finances of this road as you do your personal expenses; in other words, you must not want what you can not pay for or you must not want it very, very badly."

Senator KELLOGG. Have you any plan to suggest in connection with this legislation as to how the capital shall be secured to the Government for advances to the railroads?

Mr. KRUTTSCHNITT. The only thought I have given it has been about capital required to buy equipment. Of course that would be a very large sum. Pretty much every road in the country, or a good many of them, do as we are doing. We ourselves have borrowed money on what we call equipment trust notes. We enter into an arrangement with a trust company by which they furnish money to pay for equipment and they put plates on the cars indicating their ownership, and the carriers pay for the cars in annual partial payments. They generally make an initial payment from 10 to 15 or 20 per cent of the cost of the cars, depending upon the standing of the carrier, and the other payments are spread over 10, 15, or 20 years, which is a matter that is a subject of negotiation.

To our executive committee, when we sat here in Washington, there was several times conveyed the suggestion that the Government might help us to get equipment. It was thought that if the Government should do so that they would have perfect security in an equipment trust. In other words, the equipment would belong to the Government, and its lien would not be removed until the carriers had paid for it in full.

Senator KELLOGG. That would be comparatively simple in the case of equipment or betterments and improvements consisting of property entirely separate from the physical property of the railroads now existing; but if any road needed any borrowed capital for betterments, such as double tracking, or increasing yards, or increasing weight of rail, or anything of that nature, it could not be separated from the property, and it would not be fair to the security holders—the Government—to attempt to get a lien ahead of the other security holders if it could—I suppose it could not.

Mr. KRUTTSCHNITT. I do not think it could.

Senator KELLOGG. Probably not. Would you suggest that the individual railroad company issue its securities and pledge them with the Government for the money?

Mr. KRUTTSCHNITT. I think that is a case which would have to be dealt with individually with each carrier. Some might give better security than others. I take it the Government, or the agents of the Government, would exact the very best security, and no carrier could object to giving it. But just how it should be done I could

not say. I still believe you could not have any standard method of doing it that would not vary with different roads.

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Senator CUMMINS. Inasmuch as the Southern Pacific has been mentioned, I would like to know what the plan of the bill will do for the Southern Pacific. Have you with you the railway operating income of the Southern Pacific—I do not mean the income—but have

you the table showing the railway operating income of the Southern Pacific for the three years that are mentioned in the bill as a basis for reaching the guaranty?

Mr. KRUTTSCHNITT. I think I have.

Senator CUMMINS. What was the railway operating income of the Southern Pacific in each of the three years ending June 30, 1917, 1916, and 1915?

Mr. KRUTTSCHNITT. I can give you that if you will let me put the word "net" in front of it. I have had to figure that, because I have not the net railway operating income there used.

Senator CUMMINS. Well, put that word before it.

Mr. KRUTTSCHNITT. The net railway operating income of the Southern Pacific and proprietary companies for 1915, for the fiscal year, was \$35,777,000. That was 3.8 per cent on the property investment. The additional property investment to the 1st of January, 1918, was estimated at substantially \$62,500,000.

Senator CUMMINS. I am asking simply for the net railway operating income for each of those three years. I would like to have that separate from the other information.

Mr. KRUTTSCHNITT. I thought you also asked for the return on the property investment.

Senator CUMMINS. No; I did not.

Mr. KRUTTSCHNITT. Then I will confine myself to your question exactly. For the fiscal year 1915 the net railway operating income was \$35,777,000; for the fiscal year 1916 it was \$47,500,000; and for 1917, the fiscal year, \$60,525,000.

Senator CUMMINS. I did not know it was so high; I think you have made a mistake, but I am not sure. Will you now state the amounts paid by the Southern Pacific Railway Co., or this same property, as interest on its funded and unfunded debt as well, and the amount paid as dividends upon its stock.

Mr. KRUTTSCHNITT. I can answer the last question very easily. It has been uniformly 6 per cent on the capital stock, which is about \$273,000,000, or, say, \$16,380,000. As to the interest on the funded debt, that, of course, varies from year to year.

I find I have not the information concerning the payment of interest.

Senator CUMMINS. I have here the payment of interest for the calendar year 1916.

Mr. KRUTTSCHNITT. Pardon me, Senator, I have a copy of the annual report for 1917, which ought to give the 1916 figures also. I will look it up, if you will indulge me a moment. I will give it to you for the fiscal years ending June 30, 1915, and 1916. We have not published the report for the year ending June 30, 1917, because the year has been changed.

Senator CUMMINS. That is about \$11,000,000, is it not?

Mr. KRUTTSCHNITT. The funded interest?

Senator CUMMINS. The interest on the funded and unfunded debt.

Mr. KRUTTSCHNITT. It is much more than that.

Senator CUMMINS. I beg your pardon, but the report here says—

Mr. KRUTTSCHNITT. Why, it was \$25,100,000 in 1915.

Senator CUMMINS. The commission has reported that your interest on the funded debt for the year ending December 31, 1916, was \$12,288,595.

Mr. KRUTTSCHNITT. What I assume the commission has done is this: That if they were asked for the Southern Pacific, they probably passed the question over to some accountant to make up, and you got the interest on the funded debt of the properties that are operated by the Southern Pacific Co. under lease. That includes the properties in Arizona, New Mexico, California, Oregon, Utah, and Nevada. It does not take account of the properties, all of the stock of which is owned by the Southern Pacific Co., but which are operated by the companies themselves; that is, all the lines in Texas and Louisiana. The figures I gave are for all the Southern Pacific lines.

Senator CUMMINS. Those items, I assume, are included in the items of interest charged against those properties, because the Southern Pacific did not issue those bonds or mortgages.

Mr. KRUTTSCHNITT. No; but the payments of interest on those are all included in the operations of the Southern Pacific Co. The income account is for the Southern Pacific and proprietary companies combined.

Senator CUMMINS. I have no other information than I get from the Interstate Commerce Commission.

Mr. KRUTTSCHNITT. Those are the same companies for which I just gave the net operating income.

Senator CUMMINS. Will you state the interest again?

Mr. KRUTTSCHNITT. The interest on funded debt—that is, bonds and notes—amounts to \$25,100,000; the interest on the unfunded debt is about \$350,000. For 1916 the interest on the funded debt was \$24,600,000, and on the unfunded debt about \$300,000.

Senator CUMMINS. What was your surplus after payment of interest and dividends?

Mr. KRUTTSCHNITT. Under the form of account we have, the income balance transferred to the credit of profit and loss—that is, after the payment of interest and car rental and the items prescribed by the commission—the income balance, which includes income derived from outside investments and out of which we could pay dividends in 1915, was \$19,600,000. The dividend was 6 per cent on the stock, and consumed about \$16,400,000. That left, outside of the dividends and interest, \$3,200,000, the actual surplus which we put back into the property.

Senator CUMMINS. Which you put back into the property?

Mr. KRUTTSCHNITT. Yes; and 1916, the income balance which includes income from outside investments was \$29,950,000, and deducting the 6 per cent dividend of \$16,400,000 left \$13,550,000 as a surplus to put into the property.

Senator CUMMINS. No matter what the amount is, I am calling attention to this simply to refer to a point in this bill, relating to this guaranty: Assuming that you have the same income that you will have under the guarantee, as you put back the three millions or ten millions, as the case may be, over and above the payment of interest upon debts and dividends, the Government then is to pay your company, in addition to the net income of the average of these three years, interest upon this addition to your property?

Mr. KRUTTSCHNITT. It should. That surplus belongs to the shareholders, whether declared as a dividend or left in the treasury. It is their property, and if it is invested in their property it still remains their property.

Senator CUMMINS. I am not arguing the question of its propriety or impropriety; I simply want to make the point perfectly clear that when this plan goes into effect, that the \$250,000, or \$300,000 of surplus which the roads had, and which was not used in paying dividends or interest, when it goes back into the property, the Government has to begin paying interest on that in addition to guaranteeing the net income.

Senator KELLOGG. Under what provisions of the bill, Senator?

Mr. KRUTTSCHNITT. Of course it gets the use of all that property.

Senator CUMMINS. That is all I have.

The ACTING CHAIRMAN. Are there any other Senators who desire to ask the witness any questions?

Senator POMERENE. What amount of money have the roads put into the betterments since June 30, 1917?

Mr. THOM. Senator, we will have that for you.

Mr. KRUTTSCHNITT. I can give that for my own company only.

Senator POMERENE. Very well, then, you need not bother with that.

Mr. KRUTTSCHNITT. The last half of 1917 we put about \$8,350,000 all into betterments. I can not give you it by the half years because, you see, our accounts close for the fiscal year ending June 30. We have no report ending June 30, 1917. Our next report will be for the calendar year.

Senator POMERENE. Can you give it for 1916?

Mr. KRUTTSCHNITT. I can give it for 1916. The additional property investment in 1916 was substantially \$30,000,000.

Senator POMERENE. Is your objection to the year 1915 a general objection lodged against this bill by all of the railroad companies?

Mr. KRUTTSCHNITT. Yes, sir.

Senator POMERENE. Looking at this wholly from the standpoint of the railroads, of course, this is a plan of authorization to the President alone, and if it were adopted as law, it would still be within the power of any railroad company to refuse to enter into the agreement based upon that plan.

Mr. KRUTTSCHNITT. That is true, but as I said in answer to a question, I think, of Senator Kellogg's, it seems to me that it is desirable for the Government to give that peace of mind of the security holders which the President wishes to maintain.

Senator POMERENE. I agree with you.

Mr. KRUTTSCHNITT. And that there should not be contests; that the basis of agreement should be so fair that substantially all the railroads will come at once and make a written agreement with the President that they will be satisfied. That will last during the war, and it will quiet all uneasiness of investors, etc., as to the future of railway securities.

Mr. THOM. May I point out, Senator, that the effect of the bill as written is to limit the discretion of the President in making that arrangement. Even if you gave him discretion to use the years 1915, 1916, and 1917, that would not be mandatory upon him to do it if he thought it unjust.

Senator POMERENE. I know; it is simply a power of attorney.

The ACTING CHAIRMAN. Are there any other questions?

Senator TOWNSEND. Relative to this agreement, did you and the other representatives of the railroads have a talk with the President

before he made his proclamation as to the terms he would prescribe for compensation?

Mr. KRUTTSCHNITT. We did; that is, our executive committee—what was commonly known as the railroad war board.

Senator TOWNSEND. That was understood to represent railroads generally throughout the United States?

Mr. KRUTTSCHNITT. Yes, sir.

Senator TOWNSEND. And did you try to ascertain at that time whether there would be opposition to the plan or not on the part of any of the railroads?

Mr. THOM. I interpreted your question as asking the witness whether or not the war board had a discussion with the President on this specific plan of the three years. Am I right on that?

Senator TOWNSEND. My question was—I did not have any reference to the war board particularly—the witness stated that the war board had done it; but my question was whether he or any of the other railroad representatives had talked over the plan of compensation or the taking over of the railroads prior to the President's proclamation, and I understood the witness to say he had.

Mr. KRUTTSCHNITT. We did; the five of us went up and talked to the President in a general way as to the work we were doing, what we had accomplished, and he went on to say that—he very kindly expressed some appreciation of what had been done, but added that he thought there were a great many things that he or the Government could do which we could not do, because we could not disregard existing laws. Our talk was of a very general nature and none of these details were discussed.

Senator TOWNSEND. You did discuss the problem of remuneration, did you not?

Mr. KRUTTSCHNITT. No; he simply said he had in mind something along the line of the British plan; that he approved the idea only, without going into any details. He was not bothering about the details, but he thought the plan generally a fair one. He went into very little detail indeed.

Senator TOWNSEND. Well, the railroad men there represented were satisfied that they were going to have ample protection under any plan the President proposed, as far as he was concerned?

Mr. KRUTTSCHNITT. The President's talk with us was most reassuring, very reassuring, and we went away feeling confident of his intention to treat the railroads considerately and fairly. The thought that seemed to be uppermost in his mind at the time was the necessity of reassuring security holders, so they would not feel uneasy about their investments in railroads.

Senator TOWNSEND. You are pretty well satisfied that all of the railroads will accept this proposition if it is adopted by Congress? You do not think that those to whom this would be exceedingly favorable would accept it, while those to whom it was not favorable would reject it, and thus put an additional burden on the United States?

Mr. KRUTTSCHNITT. I will repeat what I said before, that I think the disposition of most of the railroads is to assume their burdens in the winning of this war, and anything that is at all fair and reasonable they will be disposed to accept. There are some railroads on which I think this proposition, as it is outlined in the bill, would bear

so hard that they would be compelled to ask for relief in the courts, for which the bill provides.

Senator TOWNSEND. I was just going to ask you if you knew that, but you have answered my question. How many roads of that kind do you think there are?

Mr. KRUTTSCHNITT. I do not know. We gave up our offices and stopped all inquiry after the proclamation of the President, because we had no longer any authority. No; we could not make inquiries in this direction before, because everything happened much too quickly.

Senator TOWNSEND. That is all.

Mr. THOM. Am I permitted to ask a question or two?

The ACTING CHAIRMAN. Without objection, you may.

Mr. THOM. Mr. Kruttschnitt, there was no discussion with or agreement upon a plan with the President approving this average of these special three years?

Mr. KRUTTSCHNITT. No, sir; we did not mention them.

Senator ROBINSON. Did the railroad war board discuss other plans of adjusting the plan of compensation?

Mr. KRUTTSCHNITT. No; I have really given you, in answer to Senator Townsend's question, a brief outline of everything that took place.

Senator ROBINSON. I have not asked you what occurred in the conference with the President; I do not care to go into that; but what I am desirous of knowing is whether any other plan of adjusting this matter of compensation than that discussed and suggested by the President has been seriously discussed by the representatives of the railroads?

Mr. KRUTTSCHNITT. No; the representatives of the railroads considered the President's method fair and the only objection is to some details, and I have tried to point them out.

Senator ROBINSON. You would like the years reduced to two and the year 1915 excluded, because you think it was an exceptional year?

Mr. KRUTTSCHNITT. Yes, sir; and a return paid on the additional capital put into the railroads at the end of the period.

Senator ROBINSON. Before going into the other branch of the subject, if Mr. Kruttschnitt wishes to make his statement in relation to that at this time, I suggest we take a recess until to-morrow morning.

Senator WATSON. It occurred to me—and I intended to lead up to it in some other questions—as to what the railroad war board had done and what it had accomplished, and wherein it had failed, if it had failed.

Senator ROBINSON. Do you want to take that up this afternoon?

Senator WATSON. I do not like to take two bites at a cherry, and as long as the witness was here I thought I might go ahead.

The ACTING CHAIRMAN. I was about to suggest that we will have to begin voting on amendments to the bill, which is the special order of the day, and if any member of the committee desires to question the witness on any other lines, it might be advisable to take a recess until to-morrow morning.

Mr. THOM. I wanted to get, at this point, in connection with the question of Senator Cummins, some additional figures with respect to the Southern Pacific. It will just require two or three minutes.

The ACTING CHAIRMAN. You desire to put them in now?

Mr. THOM. I did desire to do so, in connection with the question of Senator Cummins, so that it would not be so far removed on the record.

The ACTING CHAIRMAN. Very well; you may put them in now.

Mr. THOM. Mr. Kruttschnitt, I will be glad if you will give for the Southern Pacific and proprietary companies the three-year average of the net operating income for 1915, 1916, and 1917.

Mr. KRUTTSCHNITT. The three-year average of net operating income, covering the years ending June 30, 1915, 1916, and 1917, for the Southern Co. and proprietary companies was \$47,936,000.

Mr. THOM. What was the three-year average of the property investment for those three years?

Mr. KRUTTSCHNITT. The average property investment for those three years was \$956,211,000.

Mr. THOM. And what was the average rate of return for the three years of that property investment?

Mr. KRUTTSCHNITT. 5.01 per cent.

Mr. THOM. That is all I wanted to put in.

Senator ROBINSON. What was the net operating income for the fiscal year 1914?

Mr. THOM. We have not got that here, Senator, but we can get it for you.

Senator ROBINSON. I would like to have it in order to compare it with the other averages.

Senator CUMMINS. He has stated that very fully in his prior examination.

Senator ROBINSON. As to 1914?

Senator CUMMINS. Yes.

Senator ROBINSON. If he has put it in already, I will not press it further.

The ACTING CHAIRMAN. What is the pleasure of the committee as to recessing?

Senator ROBINSON. I move to take a recess and meet at 10 o'clock to-morrow morning in the Senate Office Building.

(Whereupon, at 4.25 o'clock p. m., a recess was taken until to-morrow, Tuesday, January 8, 1918, at 10 o'clock a. m.)



GOVERNMENT CONTROL AND OPERATION OF RAILROADS.

TUESDAY, JANUARY 8, 1918.

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE COMMERCE,
Washington, D. C.

The committee met at 10 o'clock a. m., pursuant to adjournment, at Room 326 Senate Office Building, Senator Ellison D. Smith, of South Carolina (chairman) presiding.

Present: Senators Pomerene, Robinson, Lewis, Underwood, Cummins, Townsend, La Follette, Poindexter, Lane, Watson, and Kellogg.

The CHAIRMAN. Mr. Thom, are you ready to proceed?

Mr. THOM. Yes, sir; we are ready to proceed. Before proceeding, Mr. Chairman, I desire to state that I find in the morning paper a reference to yesterday's hearing, which in referring to my appearance before this committee, makes the following statement:

He—

Meaning me—

indicated that the roads would fight to retain all their property during the period of Federal control.

I understand, though I have not the paper present now, that there is another paper that exploits that same idea in headlines. I think I made it clear yesterday—at, least, I tried to do so—that we were in no way controversial, nor acting in a contentious spirit in respect to this matter, and were not fighting at all; that we were in no way obstructing, and that we had determined merely to lay the facts before the committee for such weight as they would have, and I think I can appeal to the chairman and other members of the committee that that article in no way interprets properly my attitude before this committee.

The CHAIRMAN. As the chairman of the committee, my impression was that your statement was that you wanted to work in harmony with the administration. That was my impression.

STATEMENT OF MR. JULIUS KRUTTSCHNITT—Resumed.

Senator WATSON. Mr. Kruttschnitt, what was the name of the board under which the railroad managers acted?

Mr. KRUTTSCHNITT. Its official title was The Executive Committee of the Special Committee on National Defense of the American Railway Association. That was so long and cumbersome that people began calling it "The Railroad War Board," and that name was really substituted for the other, not officially, but by custom.

Senator WATSON. How was this board selected?

Mr. KRUTTSCHNITT. It came into being thus: Five days after the declaration of war by the United States on Germany, Secretary Lane introduced and had passed a resolution in the Council of National Defense, reading as follows:

Resolved, That Commissioner Hall be requested to call on the railroads to so organize their business as to lead to the greatest expedition in movement of freight.

In response to that resolution the chief executives of most of our large systems—I think 50 or 60—assembled in Washington and passed certain resolutions.

Resolved, That the railroads of the United States, acting through their chief executive officers here and now assembled, and stirred by a high sense of their opportunity to be of the greatest service to their country in the present national crises, do hereby pledge themselves with the Government of the United States and with the government of the several States, and one with another, that during the present war they will coordinate their operations in a continental railroad system merging during such period all their merely individual competitive activities in the effort to produce a maximum of national transportation efficiency. To this end we hereby agree to create an organization which will have general authority to formulate in detail and from time to time a policy of operation with all or any of the railroads, which policy, when and as announced by such temporary organization, shall be accepted and earnestly made effective by the several managements of the individual railroad companies here represented.

Senator WATSON. Pursuant to that who was selected to constitute this board?

Mr. KRUTTSCHNITT. A committee of 33, afterwards increased to 36, was selected, and that committee selected an executive committee of 5, which was the executive committee selected at Washington and popularly known as the Railroad War Board.

Senator WATSON. And who were the five?

Mr. KRUTTSCHNITT. Fairfax Harrison, president Southern Railway, chairman; Howard Elliott, chairman of the Northern Pacific; Mr. Hale Holden, president of the Burlington, Mr. Daniel Williard, ex officio; Mr. Kruttschnitt, chairman of the Southern Pacific; Mr. Rea, president of the Pennsylvania; and Mr. Edgar E. Clark, of the Interstate Commerce Commission, ex officio.

Senator WATSON. Who selected the original 36?

Mr. KRUTTSCHNITT. The general meeting of the 50 or 60 presidents who met pursuant to the call.

Senator WATSON. By the railway presidents?

Mr. KRUTTSCHNITT. Yes, sir. The country was very generally represented.

Senator WATSON. And when was this board of 5 or 6 finally appointed?

Mr. KRUTTSCHNITT. They were appointed on the 11th of April.

Senator WATSON. Did the board immediately begin or did they at once take charge of the operation of the various railroads of the United States?

Mr. KRUTTSCHNITT. Within about 10 days. It required that time to get office room and to wind up the affairs of their own offices, and I think actually they began on the 23d, I think, of April—anyhow, that is near enough; that is within a day or two.

Senator WATSON. Did they continue to offer it until the railroads were taken over by the President?

Mr. KRUTTSCHNITT. Yes, sir; of course their functions, depending as they did upon private ownership, automatically expired on the taking over of the roads for the Government.

Senator WATSON. Now, to what extent did the railroads obey the orders or accede to the requests made by your committee?

Mr. KRUTTSCHNITT. All of the roads obeyed implicitly everything that the committee instructed them to do.

Senator WATSON. Was there any instance in which any railroad, either of minor or of greater importance, declined to obey any of your orders or requests?

Mr. KRUTTSCHNITT. Not one. There was some objection when there was a difference of opinion, and perhaps some argument, but on the board insisting, their instructions were obeyed.

Senator WATSON. Now, Mr. Kruttschnitt, I wish you, in your own way, would describe just what you did and what the effect or the result of it was?

Mr. KRUTTSCHNITT. Well, the first thing the war board did was to announce a policy and to insist on all the roads following it. That led to the establishment of the most cordial and cooperative relations with the commercial bodies, shippers, State railroad commissions, manufacturers' associations, boards of trade, and also the interstate Commerce Commission. They did this by appointing six department chairmen. Those departments were coextensive with the military departments of the Army. They were known as the northeastern department, in which Mr. Hustis, of the Boston & Maine, was chairman; the eastern department, of which Mr. Loree, of the Delaware & Hudson, was chairman; the southeastern department, of which Mr. Harahan, of the Seaboard Air Line, was chairman; the central department, of which Mr. Aishton, of the Chicago & Northwestern, was chairman; the southern department, of which Mr. W. B. Scott, of the Southern Pacific, was chairman; and the western department, of which Mr. William Sproule, president of the Southern Pacific, was chairman.

In addition to those department committees, the war board appointed a subcommittee known as the commission on car service. The commission on car service was by far the most important subcommittee that the board ever created. They were charged with the distribution of cars, with supervision over the intensive loading of cars, and with the cultivation of cooperative relations with local communities. For that purpose this subcommittee of ours appointed 33 subcommittees of their own. They established those 33 committees in all important cities of the United States. These local committees got in touch with the boards of trade, commercial bodies, individual shippers, and by personal contact and persuasion got the most cordial, and I may say, universal cooperation. Never in the history of the railroads have they given as much help as they have given in the campaign of eight months, during the existence of this war board. There were few or no instances where any appeals made to shippers or commercial bodies or State railroad commissions were unheeded. To show the extent of that cooperation the State railroad commissions, through their executive committee, appointed a representative to sit in Washington. That representative was the gentleman who is now an Interstate Commerce Commissioner—Mr.

Aitchison. He represented all State commissions, sat on occasions with our committee, and in consequence offered the assistance and cooperation of the State railroad commissions in every respect in which they could help.

With the creation of the car service commission there were formulated the most satisfactory car-service rules which the railroads have ever had. By car-service rules is meant the rules governing the interchange of freight-car equipment between the carriers, which had been extremely unsatisfactory, and the situation was in a rather chaotic condition. That is to say, every carrier that could obtain possession of cars held them, regardless of what the other carriers wanted, and really regardless of the wishes of the owners of the equipment; in other words, it was a case largely of necessity knowing no law, but the carriers that had the cars held them because they knew they would want them sooner or later to handle freight, so they looked out for their own interests largely regardless of those of their neighbors and connections.

Senator POMERENE. Did that rule apply to locomotives as well as cars?

Mr. KRUTTSCHNITT. No, sir; the locomotives did not leave the railroads of their owners, as a rule. The freight cars do. They circulate, as you no doubt notice by the initials on them in the freight yards all over the country.

The first thing the commission on car service did was to arrange to pool the box cars. The box car is the most universally used and most useful car that the railroads own. Really, the box cars had been pooled, and by that I mean that their use had been common to all of the roads, and anybody who owned a box car, regardless of the owner, held onto it until he could load it and ship it somewhere else; there was a common use of box cars all over the country, absolutely without regulation. The man who could get the most box cars and hold onto them was the best fixed, and the man who could not get them was in a very bad fix, indeed.

Now, the common use of box cars was prescribed under the rules and regulations and directions of this Commission on Car Service. Shortly after they were created, the Esch bill giving the Interstate Commerce Commission control over the equipment of the interstate carriers, and known as the Esch Car Service Act, went into effect, and the chief of the Interstate Commerce Commission's division on car service sat every day with our commission on car service, and the examining attorney of the commission on car service in the Interstate Commerce Commission also sat with our committee. So that in handling the cars and in distributing them they acted under the immediate supervision of two agents of the Interstate Commerce Commission. Inasmuch as the use of the box cars was made common, the commission on car service required reports by which they could tell every day just where the cars were and just what road needed them most, and they established a policy of moving cars empty, which in my opinion was the most useful thing, the most drastic, and the most far-reaching policy that the war board ever adopted.

Senator POMERENE. You mean they were returning the cars to the owning road?

Mr. KRUTTSCHNITT. Not to any one road, but returning the cars to the road that needed them regardless of ownership. Before that was

done it was the custom of the carriers, as we have already mentioned, particularly the carriers in the East, that you might liken to a large number of terminal yards—the carriers of the East were fed by all of the roads of the United States. When the crops began to move the cars were rushed to the main trunk lines, the New York Central, Pennsylvania, Baltimore & Ohio, and Erie, and the East became filled with cars to such an extent that there were not tracks enough to hold them, and it was impossible to assort the cars or get them where needed. When the cars were made empty the roads were unwilling to let them go because they knew that sooner or later there would be loads for them and there would not be equipment. The commission on car service, with the authority of the war board, cut through all these regulations, and one of their first orders was aimed, I think, to assist the roads in the southeast—by that I mean the roads east of the Mississippi River and serving the southern or Gulf States and the southeastern Atlantic States. They were hard up for cars, and one of the first orders issued by the car commission was addressed to the trunk lines that had an excess of cars: "Ship at once so many cars at the rate of so many a day to such and such line." The roads that were addressed began at once the movement of those cars. Since the 1st of May, up to the last report that we had before the resignation of the war board—

Senator LA FOLLETTE. Was there any resistance or refusal to obey those orders as they were issued, or were they complied with?

Mr. KRUTTSCHNITT. There was no refusal, Senator; I can not say that they were accepted very cordially by the roads to which they were addressed, but nevertheless they were obeyed.

Senator LA FOLLETTE. They were executed?

Mr. KRUTTSCHNITT. They were executed, and executed in substantially all cases with commendable promptness.

Senator LA FOLLETTE. Then, did you not have substantially as complete control of freight cars that were brought within the terms of this order as a single ownership would have?

Mr. KRUTTSCHNITT. Yes; the roads pledged themselves beforehand to agree to anything that we ordered them to do, and they lived up to their agreement.

I have so far touched on the pooling of box cars only, but we come a little later on to the pooling of other cars. From the first of May up to date of our latest reports, 223,000 empty cars have been moved out of the East, where they were overcrowding facilities, to the roads as far west as the Southern Pacific and Western Pacific, serving San Francisco and California. Those cars were moved by roads to which the orders were addressed, as I say, without objection and without compensation. That, I think, is the most commendable feature of all, showing the extent to which the roads carried out a self-imposed obligation to obey the orders of the War Board.

The movement of those 223,000 cars accomplished a great deal in the way of facilitating the shipments of freight from the western roads to the east and the seaboard.

Senator LA FOLLETTE. What proportion of the cars in service—that is, the box cars in service—would the 223,000 cars that responded to the call of that order constitute?

Mr. KRUTTSCHNITT. Well, as I remember offhand, there are not quite a million box cars in the United States.

Senator LA FOLLETTE. I understand that really only a small percentage of that million is moving.

Mr. KRUTTSCHNITT. It would be 22 per cent, of course, but those cars move, of course, over and over again. They are not always the same cars.

Senator KELLOGG. I did not catch that. Was that box cars alone?

Mr. KRUTTSCHNITT. About a million.

Senator KELLOGG. And 223,000 that were moved were box cars?

Mr. KRUTTSCHNITT. Yes, sir; they were box cars.

Senator WATSON. And you have a total of about a million box cars in the United States?

Mr. KRUTTSCHNITT. Yes, sir.

Senator WATSON. Of course the 223,000 that moved has reference only to the congestion?

Mr. KRUTTSCHNITT. It had only reference to the empties.

Senator WATSON. But that was the congestion—it constituted the congestion in the east, did it not?

Mr. KRUTTSCHNITT. Perhaps "constitute" is not a proper term; but I will say contributed to the congestion—contributed very largely to it.

Senator LA FOLLETTE. Of course there is never more than a limited percentage of the million cars that are moving at one time, is there?

Mr. KRUTTSCHNITT. Well, if you mean by moving the wheels actually turning, I would say no, because there are a great many causes of delay, such as shopping and repairing and the delays at the transfer points and in the yards.

Senator LA FOLLETTE. Offhand, then, could you say about what percentage of the million box cars must necessarily be in the shops on the average? It must be a very considerable percentage.

Mr. KRUTTSCHNITT. I can tell you that exactly. We have the statistics for the roads of the United States. They were compiled for us every month so we could watch the operations of our constituents.

For the first six months' operation of the War Board, from April to September, inclusive, the percentage of freight cars in the shop or awaiting shop was 5.9 per cent against 6.4 per cent last year. That is a decrease of the cars in shop of about 8 per cent. That is one of the items of improvement that was brought about.

Senator McLEAN. The average daily miles of run of box cars is pretty low, is it not?

Mr. KRUTTSCHNITT. Yes, sir; in the last six months the average miles per day was substantially 28.

Senator ROBINSON. What was it immediately before that period?

Mr. KRUTTSCHNITT. The year before it was 27, an increase of only a little over 2 per cent.

Mr. THOM. Mr. Kruttschnitt, will you explain just what that means, that 28? That includes all the cars that are delayed in loading, etc.?

Mr. KRUTTSCHNITT. Yes. I prepared a memorandum on that which I have here somewhere. I will read this, Senator, as an answer to your question. There is some information, really, that is not exactly what you called for, but I think if I read this it will give you the information that you want.

Senator McLEAN. I shall not insist upon your putting it in now.

Mr. KRUTTSCHNITT. Well, it is also in answer to Mr. Thom's question:

Average haul of freight (p. 27 I. C. C. Report, Statistics of Railways of the United States, 1915, last issue), which represents fairly well the average length of haul of the loaded freight car, 275.80 miles. For each 100 loaded freight car-miles there are run 45.13 empty freight car-miles (latest available figures are statistics for Group I roads for year ending June, 1916, compiled by Bureau of Railway Economics). This makes the car-miles per trip of a loaded car 400.27.

Average trip of a freight car is time required to cover 400.27 miles at 28 miles per day, the average run of a freight car, or 14.3 days.

Actual time required for a car to run 400.27 miles at 10 miles per hour, estimated average speed of freight trains, is 40.03 hours, or 1.67 days.

Allowing 1.43 days for shopping and 1.6 days for idleness of car during period of car surplus leaves a balance of 9.6 days, which are consumed as follows:

I should say that the 1.43 days of shopping is based on figures giving the percentage of the car's life that it spends in the shops and 1.6 days of idleness is determined by taking the last reports on car service and shortage of the American Railway Association as determining what part of the car's life during that period was spent in idleness because it was needed.

As you will observe, the 9.6 days was consumed as follows: An average of two days for loading; an average of three days for unloading; an average of one day for inspecting, lubricating, at ends of the four freight runs embraced in 400 miles, at six hours each. That is extremely conservative time. That is six hours for passing through the freight terminals for inspecting cars and lubricating.

Now, we have a large number of movements involved in one trip of a freight car to each of which we can not assign a definite plan but to all of which in the aggregate we assign 3.6 days of delay. Those are switching from yard to freight house for loading; switching, freight house to yards, when loaded; switching and making up train; time lost in reconsignments; time lost at junction and transfer points; breaking up train in yard at destination; switching from yard to freight house at destination; switching from freight house to yard at destination; time lost when set out in yards for minor repairs. That makes up 9.6 days, with the delays given before, and, together with time required for the trip, makes up for 14.3 days required for the trip of the car. A large part of that time, as you will observe, the wheels are not turning, but the car is in service, serving the public and serving the carrier.

Mr. THOM. The average is 28 in all of those delays?

Mr. KRUTTSCHNITT. Yes; the average of 28 miles a day takes in all of those delays.

Senator McLEAN. Do you know what the average per diem trip is of a loaded car?

Mr. KRUTTSCHNITT. I have not given that to you, and I do not know just how we could get at it except to show that when a car is loaded and put into a freight train it moves at an average rate of, say, 8 to 12 miles an hour—10 is a fair average of all trains—to the next terminal.

Senator McLEAN. I have seen it stated that the average daily run of the loaded car was not to exceed 18 miles.

Mr. KRUTTSCHNITT. That is clearly incorrect.

Senator McLEAN. I assumed it must be, and that is why I asked the question.

Mr. KRUTTSCHNITT. By actual check the average run of all cars is 28 miles.

Senator McLEAN. That includes empties, in the 28 miles?

Mr. KRUTTSCHNITT. It includes everything, empties as well as loaded, and of course the loads would move a greater number than 28 and the empties probably less to make up the average of 28. So the information that the loaded car moves only 18 miles is, on the face of it, absolutely incorrect.

Senator WATSON. Now, proceed with your statement, please.

Mr. KRUTTSCHNITT. To show what was accomplished in the active campaign for conservation of transportation facilities through intensive loading of cars and of locomotives, I will refer again to the statistics of operation of the roads represented by our committee for the six months from April to September, 1917. In those six months 205,000,000,000 ton-miles were handled by Class I roads—that is, roads that handled a gross revenue of \$1,000,000 and over. That is the Interstate Commerce Commission's classification.

This is an average of 34,000,000,000 ton-miles per month, an increase of 20 per cent over 1916 and 50 per cent over the average for 1915. The carriers then handled in freight traffic 50 per cent more traffic in the months covered by this statement in 1917 than they did in 1915.

Senator KELLOGG. What were those months?

Mr. KRUTTSCHNITT. April to September, inclusive. Now, if we estimate the ton-mileage for the entire year from the ton-mileage for half the year by doubling it, we would have the astounding total of 409,000,000,000, which is an increase of 135,000,000,000 over 1915. Those figures really convey nothing to the mind unless we get some way to picture them. We can form a picture thus: According to the latest available statistics of the railroads of Canada, Germany, Great Britain, Russia, France, and Austria, excluding Hungary, those nations having a population of 323,000,000 souls and 178,000 miles of railroad, the entire freight traffic handled by the roads of all of those countries, from available statistics, equals the increase only of the traffic handled by the United States roads in 1917 over 1915.

Another way in which we can visualize this statement is this: In the first six months after we entered the war the railroads handled as much freight traffic as they did in the entire year 1906; that is to say, the freight traffic doubled in 1917 over 1906. The load per locomotive and per freight train in 1906 was 344 tons; in 1917, 675 tons.

Now, the difference in the loading of freight locomotives between 1906 and 1917 saved the running of 315,000,000 freight train-miles; and this is the only thing, really, that maintained the solvency of our railroad system in that period, because in that time the passenger rates were about stationary and the freight rates were slowly diminishing, while the expenses were increasing very rapidly.

To show the results of the accomplishment, the roads, through their own efforts, in the year 1915-1916, and through concentrated efforts of the War Board in 1916-1917—the resultant effect of increasing the number of tons put in each freight car and the number

of tons hauled by each locomotive was equivalent to adding 4,900 locomotives and 340,000 freight cars to the equipment of the carriers of the United States. That represents the effect of the War Board's efforts during its existence. The railroads realized when they started this movement that it was impossible to get more locomotives or more freight cars.

Senator WATSON. Why?

Mr. KRUTTSCHNITT. The reason I will give a little further on, if you will allow me. So the only way to get more locomotives and freight cars was to make each locomotive and each freight car do extra duty, and the resultant of this effort was, as I say, to add 4,900 locomotives and 339,000 cars to the equipment of the United States.

To form some conception of what that addition means, the roads between 1907 and 1916 ordered annually 2,846 locomotives, on an average, and 147,000 cars on an average, so that in those eight months the number of locomotives and cars added was equivalent to the locomotive orders ordinarily placed in a year and nine months, and the car orders placed in two years and four months.

Senator POMERENE. May I ask you a question there? You have just been giving us the advantages to traffic by these improved methods which have been adopted by the railroads. Did these improved methods result in any detriment to the plan of the railroads?

Mr. KRUTTSCHNITT. None. I have already read the data about freight cars, that there were less in the shops by about 8 per cent in those six months under discussion than in the preceding year, and there was a decrease of 9 per cent in the number of freight locomotives in the shops to be repaired. So that by the reports of our constituents there was no detriment to the equipment of the carriers through this intensive use.

Senator POMERENE. Then, as a matter of fact, it has resulted in a benefit both to the railroads themselves and the business of the public?

Mr. KRUTTSCHNITT. Unquestionably.

Senator WATSON. Still that extra loading of engines and extra loading of freight cars does not any more quickly terminate the life of that engine or freight car?

Mr. KRUTTSCHNITT. Not for running repairs for upkeep. I may say, to be perfectly frank, that toward the end of our existence we were getting evidence that on account of the number of men the roads lost through the selective draft, and through the coaxing away of their men by munition factories and shipyards, and what not, with higher wages, that the forces of the roads were very seriously depleted; their repair service was crippled, and a great many of our constituents complained that running repairs on their locomotives and cars could not be kept up. You understand that a locomotive may be generally in just as good condition to-day as it was last month, but if a single bolt is missing that is vital to its performance it is crippled and can not run. If you have not the men there to supply that bolt, to make it and put it in, you might as well not have the locomotive.

Senator CUMMINS. Will you please state why you did not put those methods of efficiency in operation long before?

Mr. KRUTTSCHNITT. Senator, they have been in operation for 15 years to a greater or less extent, and the principal thing the war board had to do was to take the experience and practice of the best managed roads—that is, roads at the top of the list as far as efficiency went—and try to bring the roads at the bottom of the list up nearer coincidence with the roads that were doing the best; in other words, it was to laven the whole lump. Many of the roads had been at this work, as I say, for 15 years. If they had not, they would have been in the bankruptcy courts, and in our first circular to our constituents urging on them to adopt these methods, the war board took particular pains to say that many of the roads were already using those methods, and they were simply recommending them to the roads that were not. Incidentally, of course, the roads that had been using the methods were somewhat improved by the stimulus of the emulation and publicity, and that was the reason why we published these statistics.

In addition to the sheet I read there are three sheets here covering all of the roads of the country and showing to each road what the others were doing, and our expectations were fully realized; that when a road that was doing very badly was held up to the railroad public, it was very much mortified thereat, and immediately used their very best endeavors to pull themselves up, and we could see by watching the performance of the individual roads the effect of this policy at once.

Senator POMERENE. You have no objection to incorporating those tables in the record, have you?

Mr. KRUTTSCHNITT. If you wish them, I do not see that there is any objection. We have never given them publicity outside of the railroads, because we considered that the individual road that was not doing so well did not want to be held up in the public prints. But you gentlemen have a right to any information you want that we have, and if you wish them, of course you shall have them.

Senator UNDERWOOD. I think they ought to be in the record. I would like to have them put in. You have reached the point now in this railroad proposition where we have to have full publicity in order to reach a full understanding.

Mr. KRUTTSCHNITT. I do not mean to offer any objection, Senator; I am only saying why we did not give them publicity through the press. In the very beginning we were besieged by reporters from technical and daily papers to let them have them, and we consistently refused for the reason I have given.

Senator POMERENE. I move that they be incorporated in the record.

The CHAIRMAN. Without objection, that will be done.

(The papers referred to are here printed in full, as follows:)

Monthly report of freight operation of steam railways, September, 1917.
SUMMARY.

Item.	United States. ¹				Eastern district.			
	1917	1916	Increase.		1917	1916	Increase.	
			Amount.	Per cent.			Amount.	Per cent.
Freight train-miles.....	50,361,232	50,315,044	46,158	0.1	20,558,386	20,951,374	392,988	1.9
Loaded freight car-miles.....	1,267,517,990	1,305,931,580	38,413,590	2.9	549,732,942	575,345,021	25,612,079	4.6
Empty freight car-miles.....	1,643,035,392	1,528,323,645	19,711,747	1.3	941,181,568	943,755,938	2,574,370	0.3
Total freight car-miles—loaded and empty.....	1,810,553,382	1,830,255,225	19,701,843	1.1	1,490,914,510	1,519,100,959	28,186,451	1.9
Freight locomotive-miles.....	61,031,559	60,582,651	448,908	0.7	27,983,126	27,892,556	100,570	0.4
Revenue ton-miles.....	31,500,299,036	30,604,074,564	896,225,472	2.9	15,268,395,378	14,749,417,426	548,988,953	3.7
Nonrevenue ton-miles.....	2,716,444,031	2,637,163,317	79,280,714	2.9	15,920,239,926	17,780,619,519	1,230,620,408	6.9
Average number of freight locomotives in service.....	29,806	29,533	273	0.9	12,823	12,581	242	1.9
Average number of freight locomotives in shop or awaiting shop.....	3,984	4,366	382	9.4	1,820	1,978	158	8.0
Average number of freight cars in service.....	2,370,795	2,203,088	167,707	7.6	1,187,893	1,155,066	32,827	2.8
Average number of freight cars in shop or awaiting shop.....	132,614	137,921	5,307	3.8	73,649	75,195	1,546	2.1
Home.....	101,641	109,513	7,872	7.7	55,923	60,122	4,199	7.0
Foreign.....	30,973	28,408	2,565	8.3	17,726	15,073	2,653	17.6
Tons per train.....	27.0	25.4	1.6	6.3	29.5	27.0	2.5	9.3
Average miles per locomotive per day.....	68.3	68.4	0.1	0.1	72.4	72.4	0	0
Average miles per car per day.....	26.6	27.7	1.1	4.0	22.2	23.6	1.4	6.9
Per cent of empty car-miles.....	30.0	28.6	1.4	4.9	30.5	29.8	0.7	2.3
Per cent of freight locomotives in shop or awaiting shop.....	13.4	14.9	1.5	10.1	14.1	15.4	1.3	8.4
Per cent of freight cars in shop or awaiting shop.....	5.8	6.3	0.5	7.9	6.2	6.5	0.3	4.6
Revenue ton-miles:								
Per freight locomotive.....	1,056,944				1,187,572			
Per freight car.....	13,872				12,879			
Average miles operated, single track.....	213,967.23	213,783.93	183.30	.1	96,260.14	96,628.10	367.96	.4

¹ The returns included in the monthly statement represent about 92 per cent of the total operated mileage of the roads of Class I and about 95 per cent of their total traffic. There are excluded from the statement 24 roads, having an aggregate mileage of 16,466.15, which have not yet filed returns for the month.

+ Decrease.

Monthly report of freight operation of steam railways, September, 1917—Continued.

SUMMARY—Continued.

Item.	Southern district.				Western district.			
	1917	1916	Increase.		1917	1916	Increase.	
			Amount.	Per cent.			Amount.	Per cent.
Freight train-miles.....	7,173,954	6,692,120	481,834	7.2	22,638,862	22,671,550	142,688	10.2
Loaded freight car-miles.....	174,171,392	170,742,621	3,428,771	2.0	543,613,656	559,843,938	16,230,282	2.9
Empty freight car-miles.....	82,998,308	72,450,763	10,547,545	14.6	218,855,518	207,116,944	11,738,574	5.7
Total freight car-miles—loaded and empty.....	257,169,700	243,193,384	13,976,316	5.7	762,469,174	766,960,882	4,491,708	1.6
Freight locomotive-miles.....	8,015,122	7,549,741	465,381	6.2	26,053,312	26,170,354	117,042	1.5
Revenue ton-miles.....	4,572,623,270	4,261,175,888	311,347,382	7.3	11,629,470,288	11,583,481,261	35,989,027	3.3
Nonrevenue ton-miles.....	421,754,343	414,098,719	7,655,624	1.8	1,374,449,763	1,322,445,079	52,004,684	3.9
Average number of freight locomotives in service.....	4,332	4,310	22	1.0	12,572	12,392	180	1.5
Average number of freight locomotives in shop or awaiting shop.....	4,523	4,524	1	1.2	1,641	1,896	255	13.4
Average number of freight cars in service.....	260,065	245,420	14,645	6.0	822,837	802,602	20,235	2.5
Average number of freight cars in shop or awaiting shop.....	12,130	14,360	2,230	18.5	11,631	48,366	37,735	322
Home.....	9,441	11,901	2,460	26.7	36,277	37,490	1,213	3.2
Foreign.....	2,689	2,459	230	9.4	10,568	10,876	308	2.9
Tons per train.....	686	699	13	1.4	575	570	5	.9
Tons per loaded car.....	28.7	27.4	1.3	4.7	23.9	23.1	.8	3.6
Average miles per locomotive per day.....	61.4	68.4	3.0	6.1	66.4	67.7	1.3	1.9
Average miles per car per day.....	33.0	33.0	0	0	30.9	31.9	1.0	3.1
Per cent of empty car-miles.....	32.3	29.8	2.5	8.4	28.7	27.0	1.7	6.3
Per cent of freight locomotives in shop or awaiting shop.....	12.0	12.2	1.2	11.6	13.1	16.3	3.2	14.4
Per cent of freight cars in shop or awaiting shop.....	4.7	5.9	1.2	20.3	5.7	6.0	1.3	15.0
Revenue ton-miles.....	1,050,672	925,029	125,643	12.0	14,153	120,442.14	283.01	2.0
Per freight locomotive.....	17,582	14,153	3,429	19.3	120,442.14	120,149.13	293.01	2.4
Per freight car.....	31,234.95	31,108.70	126.25	.4	120,442.14	120,149.13	293.01	2.4
Average miles operated, single track.....								

COMBINED SIX MONTHS, APRIL TO SEPTEMBER, INCLUSIVE.

Item.	United States.				Eastern district.		
	1917	1916	Increase.		1916	Increase.	
			Amount.	Per cent.		Amount.	Per cent.
Freight train-miles.....	329,991,398	312,857,320	17,134,078	5.5	134,254,582	2,234,894	1.7
Loaded freight car-miles.....	8,250,294,227	7,903,547,492	346,746,735	4.4	3,606,590,179	52,253,999	1.5
Empty freight car-miles.....	3,629,216,151	3,460,087,766	169,127,385	4.9	1,630,897,080	148,296,122	2.9
Total freight car-miles—loaded and empty.....	11,879,499,378	11,363,635,258	515,864,120	4.5	5,237,487,259	3,987,877	.1
Freight locomotive-miles.....	391,685,639	369,965,722	21,719,917	5.9	178,952,184	4,505,902	2.6
Revenue ton-miles.....	204,702,861,866	179,586,351,511	25,116,510,354	14.0	99,138,196,081	10,188,729,875	11.6
Nonrevenue ton-miles.....	18,044,426,837	16,214,121,267	1,830,305,570	11.3	89,951,466,156	728,674,902	14.9
Average number of freight locomotives in service.....	31,163	30,736	427	1.4	4,891,941,799	134	1.0
Average number of freight locomotives in shop or awaiting shop.....	4,360	4,744	384	8.1	13,139	110	0.4
Average number of freight cars in service.....	2,325,573	2,272,722	52,851	2.3	1,185,623	21,086	1.8
Average number of freight cars in shop or awaiting shop.....	136,324	145,394	8,070	5.9	76,076	12,759	17.7
Home.....	103,963	117,148	13,185	12.7	60,914	16,571	27.1
Foreign.....	32,361	28,246	4,115	12.8	15,162	2,782	18.3
Tons per train.....	675	626	49	7.8	711	69	9.7
Tons per loaded car.....	27.0	24.8	2.2	8.9	28.0	2.6	9.2
Average miles per locomotive per day.....	68.7	65.8	2.9	4.4	73.7	1.1	1.5
Average miles per car per day.....	27.9	27.3	.6	2.2	24.0	.4	1.7
Per cent of empty car-miles.....	30.6	30.4	.2	.7	31.1	1.0	3.1
Per cent of freight locomotives in shop or awaiting shop.....	14.0	13.4	.6	4.1	14.6	1.0	6.4
Per cent of freight cars in shop or awaiting shop.....	8.9	6.4	2.5	28.1	8.0	1.4	16.3
Revenue ton-miles:							
Per freight locomotive.....	6,563,779	7,469,183	805,404	12.3	7,469,183		
Per freight car.....	883,023	815,416	67,607	7.7	815,416		
Average miles operated, single track.....	225,852.02	225,462.18	389.84	.2	58,208.46	126.28	1.2

1 Decrease.

Monthly report of freight operation of steam railways, September, 1917—Continued.
 COMBINED SIX MONTHS, APRIL TO SEPTEMBER, INCLUSIVE—Continued

Item.	Southern district.				Western district.			
	1917	1916	Increase.		1917	1916	Increase.	
			Amount.	Per cent.			Amount.	Per cent.
Freight train-miles.....	57,940,878	52,756,705	5,083,173	9.7	137,886,838	128,080,887	9,805,951	7.7
Loaded freight car-miles.....	1,344,965,081	1,247,738,043	97,227,048	7.8	3,298,728,967	3,101,473,269	197,255,698	6.4
Empty freight car-miles.....	643,332,008	568,336,733	74,975,775	13.2	1,354,985,563	1,212,547,881	142,437,733	11.7
Total freight car-miles—loaded and empty.....	1,988,297,089	1,816,074,776	172,222,823	9.5	4,653,714,530	4,314,021,150	339,693,420	7.9
Freight locomotive-miles.....	63,380,042	57,646,491	5,733,551	10.1	149,353,463	137,972,999	11,380,464	8.2
Revenue ton-miles.....	34,026,885,960	29,220,297,887	4,806,588,372	16.4	71,537,779,875	61,414,887,763	10,122,892,112	16.5
Nonrevenue ton-miles.....	3,231,788,103	2,880,986,732	400,799,371	14.2	9,192,124,053	8,491,282,736	700,831,297	8.3
Average number of freight locomotives in service.....	5,312	5,212	100	1.9	12,578	12,385	193	1.6
Average number of freight locomotives in shop or awaiting shop.....	643	670	27	4.0	1,779	2,028	247	12.2
Average number of freight cars in service.....	307,042	307,692	650	0.2	803,822	771,507	32,315	4.2
Average number of freight cars in shop or awaiting shop.....	16,931	20,535	3,604	18.7	46,106	48,473	2,367	5.1
Home.....	13,242	17,677	4,435	24.5	35,297	38,657	3,360	9.5
Foreign.....	3,689	3,158	531	13.6	10,809	9,916	893	9.0
Tons per train.....	644	606	38	5.9	846	846	0	0.0
Tons per loaded car.....	27.7	25.7	2.0	7.3	24.5	22.5	2.0	8.9
Average miles per locomotive per day.....	66.2	60.3	4.9	8.1	64.9	60.9	4.0	6.6
Average miles per car per day.....	35.4	32.3	3.1	9.0	31.6	30.6	1.0	3.3
Per cent of empty car-miles.....	32.4	31.3	1.1	3.5	29.1	28.1	1.0	3.6
Per cent of freight locomotives in shop or awaiting shop.....	12.1	12.9	0.8	6.3	16.4	16.4	0.0	0.0
Per cent of freight cars in shop or awaiting shop.....	5.5	6.8	1.3	19.1	6.7	6.3	0.4	6.0
Revenue ton-miles:								
Per freight locomotive.....	6,405,664				5,887,832			
Per freight car.....	110,822				88,997			
Average miles operated, single track.....	40,678.04	40,488.49	240.15	.6	127,081.20	126,835.23	245.97	.2

EASTERN DISTRICT.

[Figures in Italics indicate increases.]

Road.	Average miles operated 1917.	Freight train-miles (000 omitted).		Total freight car-miles (000 omitted).		Freight locomotive-miles (000 omitted).		Revenue ton-miles (000 omitted).		Non revenue ton-miles (000 omitted).		Average number of freight locomotives in service.	
		1917	1916	% of Inc.	1917	1916	% of Inc.	1917	1916	% of Inc.	1917	1916	% of Inc.
Ann Arbor R. R. ¹													
Atlantic & St. Lawrence ¹													
Atlantic City (Inc. in P. & R.)													
Baltimore & Ohio (Inc. C., H. & D.)	4,941	1,900	1,984	1.5	73,917	75,936	4.0	2,580	2,451	5.2	1,457,867	1,524,338	4.4
Baltimore, Chesapeake & Atlantic	88	7	7	2.4	73	59	22.0	7	7	2.5	611	598	2.0
Bangor & Aroostook	632	64	77	17.7	1,563	1,973	19.3	54	71	25.0	18,169	21,657	16.1
Bessemer & Lake Erie	208	141	169	20.0	7,995	8,320	3.9	309	344	10.0	233,666	263,395	3.7
Boston & Maine	2,260	670	681	1.6	18,355	20,228	9.3	893	951	9.3	257,357	267,812	3.9
Buffalo & Susquehanna R. R.													
Buffalo, Rochester & Pittsburgh	253	43	50	14.1	858	966	12.9	60	70	15.6	13,380	20,379	9.8
Canadian Pacific lines in Maine	587	260	276	6.8	10,001	9,773	2.3	405	434	6.7	243,464	228,423	6.6
Central New England	234	42	41	1.5	880	899	2.0	44	44	0.5	16,585	14,387	15.3
Central R. R. of New Jersey	301	85	91	7.1	2,635	2,745	4.0	86	104	17.8	50,726	41,643	21.8
Central Vermont	694	384	393	2.6	11,555	12,342	6.4	453	460	1.5	235,502	222,365	5.9
Chicago & Eastern Illinois	536	76	81	6.9	1,716	1,959	12.4	77	90	15.9	23,035	23,496	1.9
Chicago & Erie	1,131	348	277	25.7	12,157	10,133	20.0	367	285	28.9	191,584	191,584	34.4
Chicago, Detroit & Canada G. T. Ry. ¹	270	171	172	0.7	8,000	8,382	4.6	189	187	1.1	137,845	138,476	0.6
Chicago, Indianapolis & Louisville	654	134	124	0.8	3,969	4,207	5.9	132	133	0.9	72,005	72,000	1.4
Chicago, Terre Haute & South-eastern ¹													
Cin., Ham. & Dayton (Inc. in B. & O.)													
Cin., Indianapolis & Western	296	49	53	8.9	1,076	1,314	18.1	54	54	0.7	19,463	21,804	9.6
Cin. Northern (Inc. in C., C. & St. L.)													
Cleveland, Cin., Chgo. & St. L. (Inc. C. N.)	2,613	817	751	8.9	33,668	30,899	9.1	833	895	8.0	581,154	516,682	12.5
Cumberland Valley	164	68	48	42.0	2,008	2,154	20.9	81	64	26.9	55,253	40,590	36.1

¹ Returns not filed.¹ Decrease.

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Monthly report of freight operation of steam railways, September, 1917—Continued.

EASTERN DISTRICT—Continued.

Road.	Average number of operating miles in 1917.	Freight train-miles (000 omitted).			Total freight car-miles (000 omitted).			Freight locomotive-miles (000 omitted).			Revenue ton-miles (000 omitted).			Average number of freight trains in service.					
		1917		% of inc.	1917		% of inc.	1917		% of inc.	1917		% of inc.	1917		% of inc.			
		1916	1915		1916	1915		1916	1915		1916	1915		1916	1915				
Delaware & Hudson Co.	903	458	399	14.9	17,020	14,447	17.8	703	589	19.4	355,908	283,946	25.3	11,455	17,414	51.8	356	357	0.3
Delaware, Lackawanna & Western	996	527	560	6.7	22,991	25,434	9.6	964	1,009	4.4	438,647	439,379	0.8	15,578	18,810	17.8	433	441	8.0
Detroit & Toledo Shore Line.	81	17	24	26.4	722	963	25.0	34	35	2.1	20,090	24,146	16.8				22	22	
Detroit, Grand Haven & Milwaukee I.	441	55	41	35.6	1,679	1,596	5.2	83	64	30.0	36,740	30,665	19.8	1,346	1,945	50.8	59	59	
Detroit, Toledo & Ironton	805	157	161	2.5	6,383	6,537	2.4	184	186	0.7	173,774	169,007	2.8	8,703	5,808	49.8	128	131	2.3
Edmore, Joliet & Eastern	1,988	944	979	3.6	42,211	44,690	5.6	1,112	1,148	3.2	707,906	705,642	0.3	64,228	57,153	12.4	590	633	6.8
Elgin, Joliet & Eastern	575	108	108	5.6	2,513	2,587	1.7	117	113	4.4	44,378	39,869	11.2	3,307	6,709	50.7	50	48	4.2
Grand Rapids & Indiana																			
Grand Trunk Western	330	133	125	6.1	7,478	6,801	10.0	163	148	10.4	201,823	164,183	22.9	4,275	4,061	5.3	69	57	21.1
Hocking Valley																			
Kalamazoo & Michigan (Inc. in T. & O. C.)	877	181	179	1.4	5,453	5,016	8.7	192	187	2.9	88,578	77,790	13.9	6,285	3,068	74.2	83	87	6.9
Lake Erie & Western	97	47	46	2.6	1,603	1,728	7.8	56	55	1.0	28,501	33,028	4.5	400	231	73.2	32	35	8.6
Lehigh & Hudson River	296	47	36	29.6	1,268	1,059	32.2	73	56	30.1	28,743	21,041	36.6	272	462	41.8	43	41	4.9
Lehigh & New England	1,443	637	742	14.1	26,314	27,813	5.4	841	926	9.8	556,842	544,671	2.1	18,666	16,449	13.5	552	530	4.2
Long Island	1,397	47	45	4.0	977	823	18.8	102	84	20.9	14,309	10,819	32.3	35	54	58.5	44	44	4.5
Long Island	1,216	201	205	2.0	4,876	5,390	9.6	210	213	0.7	62,438	63,854	2.8	2,242	4,625	51.8	81	88	8.0
Maine Central	1,825	555	581	4.4	24,572	26,170	6.1	669	673	0.7	360,514	360,344		18,456	14,810	24.6	368	344	7.0
Michigan Central																			
Monongahela	5,652	2,063	2,169	4.9	111,028	119,351	7.0	2,474	2,554	3.1	1,881,334	1,906,528	4.1	192,987	134,637	45.5	1,193	1,248	4.4
New York Central	396	324	308	5.0	8,820	9,551	7.7	389	369	5.2	127,558	128,546	0.8	7,242	6,634	9.2	148	135	6.6
New York, Chicago & St. Louis I.																			
New York, New Haven & Hartford																			
New York, Ontario & Western	1,998	531	661	19.7	16,022	18,039	11.8	638	765	16.6	231,971	233,488	0.6	18,136	13,246	36.9	421	493	14.6
New York, Philadelphia & Norfolk	568	112	129	13.8	3,113	3,460	10.0	135	151	10.6	58,796	64,940	9.8	2,881	3,006	4.8	86	98	9.8
New York, Susquehanna & Western	126	29	23	24.0	691	509	33.7	55	37	49.9	16,744	10,277	62.9	537	394	36.2	42	45	6.7
Peninsula Co. (Inc. P. C. & St. L.)	4,161	2,260	2,277	0.4	71,483	71,189	0.4	2,233	2,246	0.6	1,464,054	1,408,859	3.9	59,138	40,303	1.9	845	853	0.9

Pa. R. R. (Inc. F. R. & W. Vand. W. J. & S. S.)	2,379	2,083	0.9	120,866	127,499	5.8	6,642	6,380	4.0	2,527,826	2,459,696	2.8	181,677	180,132	0.9	2,115	2,015	5.0
Pa. R. R. (Inc. F. R. & W. Vand. W. J. & S. S.)	2,248	328	6.6	11,219	12,415	8.6	349	362	3.8	181,687	180,683	7.7	10,980	8,869	23.9	123	131	6.1
Pa. R. R. (Inc. F. R. & W. Vand. W. J. & S. S.)	1,622	874	0.4	26,909	26,649	0.8	1,069	1,070	0.1	651,402	615,238	5.9	25,521	22,884	11.5	634	629	0.8
Phila. Balto. & Wash. (Inc. in Pa. R. R.)	225	140	5.1	8,243	9,143	9.8	154	151	2.3	222,072	219,558	1.1	8,170	6,219	31.4	69	72	5.5
Pittsburgh & Lake Erie	86	18	0.1	459	505	9.3	20	19	5.2	12,832	13,159	1.7	24	100	75.9	20	15	83.3
Pittsburgh & West Virginia																		
Pitts. C. C. & St. L. (Inc. Pa. R. R.)																		
Pittsburgh, Shawmut & Northern	205	35	25.9	691	1,242	44.4	46	69	32.4	15,176	25,052	39.4	301	472	36.2	35	35	
Port Reading (Inc. in P. & R.)	415	63	16.3	1,069	1,333	19.8	78	64	21.4	27,214	20,590	32.2	380	1,764	78.6	44	44	
Rutland	24	5	59.5	121	135	10.3	5	9	59.5	2,406	2,208	9.0	(1)	(1)		4	4	
Staten Island Rapid Transit																		
Toledo & Ohio Central (Inc. K. & M.)	696	218	16.1	9,374	7,923	18.3	248	219	13.8	212,374	167,142	27.1	5,075	4,146	22.4	121	121	
Toledo, St. Louis & Western	451	202	157	29.2	6,583	5,179	27.1	177	21.2	98,701	73,587	34.1	7,828	6,859	14.6	56	52	7.7
Ulster & Delaware	129	19	2.8	240	199	20.9	23	20	12.0	4,238	3,377	25.5	11	64	83.6	17	17	
Vandalia (Inc. in Pa. R. R.)																		
Wabash	2,519	678	1.8	25,027	24,768	1.0	688	705	2.4	406,440	382,232	6.3	25,685	30,720	16.4	365	349	4.6
West Jersey & S. S. (Inc. in Pa. R. R.)																		
Western Maryland	697	196	7.5	7,530	8,742	15.9	249	281	11.4	173,214	186,078	8.4	9,796	9,660	1.4	177	169	4.7
Wheeling & Lake Erie	547	123	19.1	4,723	4,994	6.4	134	165	19.0	158,193	152,947	3.4	4,117	4,340	5.1	150	149	0.7
Total	56,263	20,555	1.9	790,913	819,099	5.4	27,961	27,861	0.4	15,268,302	14,749,420	3.7	920,241	790,623	16.4	12,882	12,831	0.4

* Returns not filed.

* Less than one-tenth of 1 per cent.

* Averages based on revenue ton-miles; nonrevenue ton-miles not reported.

Monthly report of freight operation of steam railways, September, 1917—Continued.

EASTERN DISTRICT—Continued.

Road.	Average number of freight cars in service.			Tons per train.			Tons per loaded car.			Average miles per locomotive per day.			Average miles per car per day.			Per cent of empty car-miles.			Per cent of freight locomotives in shop or awaiting shop.			Per cent of freight cars in shop or awaiting shop.			Revenue ton-miles, 1917, per—	
	1917	1916	% of Inc.	1917	1916	% of Inc.	1917	1916	% of Inc.	1917	1916	% of Inc.	1917	1916	% of Inc.	1917	1916	% of Inc.	1917	1916	% of Inc.	1917	1916	% of Inc.	Freight locomotive (000 omitted).	Freight car (000 omitted).
Ann Arbor R. R.																										
Atlantic & St. Lawrence																										
Atlantic City (Inc. in P. & R.)																										
Baltimore & Ohio (Inc. C., H. & D.)	15,458	102,342	12.8	803	820	4.1	30.2	29.9	1.0	68.3	63.0	8.4	21.1	24.7	14.6	30.4	30.2		7.9	12.8	2.5	4.0			1,157.9	12.6
Baltimore, Chesapeake & Atlantic	69	70	1.4	95	95		10.9	13.4	18.7	37.2	43.6	14.7	34.7	28.0	23.9	18.6	20.8		50.0	60.0	1.4	1.4			101.8	8.8
Bangor & Aroostook	5,081	5,309	4.7	328	301	9.0	18.7	17.4	7.5	34.3	42.5	19.5	10.5	12.4	15.3	29.9	32.5		19.2	19.6	10.0	9.3			349.4	3.6
Bessemer & Lake Erie	10,855	9,011	20.5	1,869	1,866	36.8	46.6	46.8	0.4	63.7	80.8	27.8	24.6	30.8	40.1	29.1	30.1		6.2	10.6	4.7	5.8			1,566.8	22.4
Boston & Maine	33,477	35,983	7.0	400	412	2.9	19.9	18.8	5.9	63.5	72.4	12.3	18.3	18.7	2.1	26.7	26.4		12.4	14.4	6.0	5.6			568.1	7.7
Buffalo & Susquehanna R. R.																										
Buffalo, Rochester & Pittsburgh	1,389	1,237	12.3	451	420	7.4	42.2	39.0	8.2	65.0	68.6	5.8	20.6	26.6	22.6	46.1	44.9		26.8	23.5	8.9	11.8			592.9	13.2
Canadian Pacific lines in Maine	12,198	13,432	9.8	968	862	12.3	42.0	36.7	5.8	87.1	93.3	6.6	27.3	24.3	12.3	39.9	38.7		21.9	29.7	3.8	4.9			1,970.7	20.0
Central New England	2,315	3,159	26.7	609	494	21.8	33.4	26.7	25.1	71.4	69.5	2.7	37.9	29.0	30.7	41.5	40.0		6.0	8.0	9.7	2.9			1,268.1	21.9
Central R. R. of New Jersey	26,652	26,796	0.6	650	594	9.4	33.4	29.9	11.7	60.9	61.3	0.7	14.5	15.4	5.8	35.3	36.6		13.3	13.6	11.5	9.1			949.6	8.8
Central Vermont	2,168	2,618	17.5	316	300	5.3	17.4	16.8	10.1	54.4	61.9	12.1	28.4	24.9	6.0	20.4	21.8		27.7	26.0	9.9	11.6			490.1	10.6
Chicago & Eastern Illinois	19,408	14,459	34.2	782	731	8.5	33.2	28.5	16.5	68.7	55.2	24.5	20.9	23.4	10.7	32.6	30.8		38.0	43.0	15.3	31.2			1,447.0	13.3
Chicago & Erie	5,696	6,178	7.7	827	825	0.2	24.2	23.6	2.5	92.7	85.5	8.4	46.8	45.3	3.3	26.9	28.3		7.4	9.6	4.5	3.7			2,027.1	24.2
Chicago, Detroit & Canada G. T. Jet.																										
Chicago, Indianapolis & Louisville	5,793	5,017	2.6	581	558	4.1	26.4	24.3	8.6	58.8	61.8	4.9	22.9	25.0	8.4	25.5	26.5		10.7	9.7	3.1	3.8			974.2	12.7
Chicago Terre Haute & South-eastern																										
Cin., Ham. & Dayton (Inc. in E. & O.)																										
Cin., Indianapolis & Western	1,498	1,905	17.5	417	430	3.0	27.1	23.3	16.3	63.8	64.3	0.8	24.0	24.3	1.3	30.3	25.0		10.7						693.1	13.0
Cin. Northern (Inc. in C., C. & St. L.)																										
Cleveland, Cin., Chgo. & St. L. (Inc. C. N.)	38,285	33,127	15.5	774	711	8.9	26.6	24.0	10.8	66.5	73.3	9.5	29.3	31.1	5.8	29.4	27.9		9.8	6.8	7.1	6.3			1,357.8	15.2

	1,401	1,164	29.0	820	863	4.0	32.3	29.4	9.9	55.4	54.9	10.6	57.8	61.7	6.4	34.1	35.3	8.3	10.2	3.5	2.1	1,197.2	26.8
Cumberland Valley Co.	17,615	21,633	18.6	801	755	6.1	32.8	29.2	12.3	66.8	55.0	10.6	57.2	22.3	44.4	34.5	28.6	9.3	10.4	12.7	12.0	996.7	20.2
Delaware & Hudson Co.																							
Western	26,054	28,116	7.9	861	819	6.1	28.2	26.6	10.2	74.4	76.2	3.4	20.4	30.2	3.6	30.0	26.0	10.2	8.8	3.7	3.3	1,015.4	15.8
Detroit & Toledo Shore Line	655			1,159	1,024	13.2	42.0	38.6	8.8	51.2	52.3	3.1	37.9	(*)		33.7	35.0	22.7	(*)	12.4	(*)	913.2	31.6
Detroit, Grand Haven & Milwaukee																							
Detroit, Toledo & Ironton	3,091	2,688	19.4	687	797	15.8	33.7	29.1	15.8	47.1	36.2	30.1	18.1	20.6	15.1	32.7	29.7	10.2	10.2	11.8	24.5	622.7	11.9
Elgin, Joliet & Eastern	11,378	11,304	0.7	1,161	1,085	7.0	41.3	38.4	7.6	48.0	47.3	1.5	18.7	19.3	3.7	30.8	30.3	4.7	9.2	2.6	6.4	1,357.6	15.3
Elgin, Joliet & Eastern	55,113	56,298	7.1	818	779	5.0	26.1	24.4	7.0	62.8	60.5	3.8	25.5	25.1	1.6	28.0	30.0	13.6	13.7	3.8	3.5	1,199.8	12.8
Grand Rapids & Indiana	4,556	5,402	15.7	440	454	5.1	24.3	23.8	2.1	78.3	78.1	0.3	18.4	15.8	16.5	22.0	23.5	12.0	10.4	2.1	3.3	887.6	9.7
Grand Trunk Western																							
Hocking Valley	13,899	11,330	22.7	1,551	1,344	15.4	48.1	42.6	12.9	78.7	80.3	8.8	17.9	20.0	10.6	42.8	42.0	11.6	21.1	5.5	7.5	2,925.0	14.5
Kanawha & Michigan (Inc. in T. & O. C.)																							
Lake Erie & Western	6,663	6,663	0.5	523	455	14.9	24.1	20.7	16.4	69.0	71.7	5.8	27.2	25.1	8.4	27.9	21.5	16.1	10.3	4.1	4.1	952.5	13.2
Lehigh & Hudson River	3,979	3,587	1.4	736	719	2.4	34.5	32.9	4.9	58.3	52.6	10.6	32.2	38.1	6.9	36.8	41.5	18.8	17.1	14.5	19.1	1,078.2	96.6
Lehigh & New England	42,723	43,525	2.6	901	822	4.2	41.6	40.5	4.5	56.3	45.4	24.0	11.9	9.0	32.2	45.0	44.6	20.9	12.2	0.9	0.9	668.4	8.1
Long Island	6,037	5,410	11.6	306	242	28.4	22.7	18.8	20.7	73.7	63.7	16.7	5.4	5.1	5.9	35.4	29.6	10.9	13.6	2.7	1.8	811.1	2.4
Maine Central	7,989	8,685	8.0	322	334	5.6	18.5	17.9	3.4	86.5	80.6	7.3	20.3	20.7	1.9	28.4	29.2	13.6	11.4	10.4	8.6	770.8	7.8
Michigan Central	35,034	36,242	3.9	682	645	6.7	20.4	19.5	4.6	60.6	55.3	7.8	24.8	24.1	2.9	24.4	26.6	16.0	14.5	6.1	6.8	979.7	10.9
Monongahela																							
New York Central	135,348	138,852	1.1	1,006	885	12.4	27.2	23.5	15.7	69.1	68.2	1.3	27.3	26.7	8.7	31.3	30.9	12.7	19.2	6.1	6.7	1,577.0	13.9
Boston & Albany	9,952	9,256	7.5	417	432	3.5	21.7	20.1	8.0	87.5	91.2	4.1	29.5	34.4	14.5	29.4	30.6	6.1	6.7	3.7	2.9	861.9	12.8
New York, Chicago & St. Louis																							
New York, New Haven & Hartford	43,151	42,694	1.1	471	373	26.3	21.5	19.3	11.4	50.5	51.7	2.3	12.4	14.1	18.1	27.5	29.0	5.0	10.8	3.4	6.5	551.0	5.4
New York, Philadelphia & Norfolk	5,794	7,045	17.8	552	527	4.7	32.1	31.7	1.3	50.5	51.2	1.4	17.9	16.4	9.1	38.2	38.1	12.4	7.1	8.0	6.5	660.6	10.1
New York, Susquehanna & Western	2,777	2,343	19.5	603	462	30.5	41.5	31.2	33.0	44.0	37.4	60.6	8.3	7.2	15.3	39.8	32.8	16.7	11.1	1.0	1.0	398.7	6.0
Pennsylvania Co. (Inc. P. C. & St. L.)	110,935	116,001	4.4	671	645	26.4	28.7	27.0	6.3	88.1	87.8	0.3	21.5	20.5	4.9	25.8	23.5	20.8	15.4	10.6	8.1	1,732.6	13.2
Pa. R. R. (Inc. P. B. & W. V. & W. J. & S. S.)	192,192	189,736	13.2	916	885	3.5	33.6	30.4	10.5	104.7	105.7	0.1	21.0	23.0	16.0	33.2	32.0	18.3	18.0	5.7	5.2	1,195.2	13.2
Pere Marquette	18,283	20,538	11.1	587	585	0.3	22.3	21.8	2.3	94.5	92.2	2.5	20.5	20.1	2.0	22.9	24.0	20.3	22.9	7.4	9.3	1,477.1	9.9
Pittsburgh & Reading (Inc. A. C. P. R.)	46,762	48,963	4.5	775	727	6.6	39.3	32.5	20.9	56.2	56.7	0.9	19.2	20.2	5.0	36.0	33.8	9.5	12.6	4.5	2.6	1,027.4	13.9
Pittsburgh & Wash. (Inc. in Pa. R. R.)																							
Pittsburgh & Lake Erie	31,181	25,962	20.1	1,639	1,520	7.8	41.3	34.7	19.0	74.6	68.9	8.3	8.8	11.7	24.8	22.4	28.8	7.2	8.2	9.9	6.5	3,218.4	7.1
Pittsburgh & West Virginia	2,559	1,934	29.0	711	729	2.5	37.4	35.8	4.5	32.8	41.6	21.5	6.0	8.5	25.4	24.4	26.6	15.0	20.0	2.9	2.3	646.6	5.1
Pitts. C. & St. L. (Inc. in Pa. R. R.)																							
Pittsburgh, Shawmut & Northern	1,837	2,615	57.4	602	736	18.8	38.7	39.8	2.8	44.1	65.2	32.4	14.1	15.8	10.8	42.1	48.4	17.1	25.7	35.3	31.0	433.6	9.3
Port Reading (Inc. in P. & R. Rutland)	2,448	2,617	6.5	439	414	6.9	21.2	21.2		56.0	48.6	21.4	22.7	17.7	28.2	22.1	24.2	9.1	2.3	5.2	3.7	618.5	11.1

* Not reported.

† Returns not filed.

Monthly report of freight operation of steam railways, September, 1917—Continued.

EASTERN DISTRICT—Continued.

[illegible]

SOUTHERN DISTRICT.
[Figures in italics indicate decreases.]

Road.	Average miles operated, 1917.	Freight train-miles (000 omitted).			Total freight car-miles (000 omitted).			Freight locomotive-miles (000 omitted).			Revenue ton-miles (000 omitted).			Nonrevenue ton-miles (000 omitted).			Average number of freight locomotives in service.		
		1917	1916	Per cent of increase.	1917	1916	Per cent of increase.	1917	1916	Per cent of increase.	1917	1916	Per cent of increase.	1917	1916	Per cent of increase.	1917	1916	Per cent of increase.
Alabama & Vicksburg Ry. ¹	143	37	25	46.6	753	634	18.8	39	29	34.7	11,377	9,148	24.4	745	427	74.3	12	12	.....
Alabama Great So. (Inc. in So. Ry.) ¹																			
Atlanta & W. Point (Inc. W. Ry. of Ala.) ¹																			
Atlanta, Birmingham & Atlantic ¹																			
Atlantic Coast Line ¹																			
Carolina, Clinchfield & Ohio	283	45	46	0.8	2,283	1,822	25.3	77	61	25.1	49,752	36,796	35.2	1,475	1,168	26.3	32	27	18.5
Central of Georgia	1,919	212	221	5.8	6,018	6,440	6.6	206	217	6.5	75,148	82,107	8.6	17,808	14,816	20.2	110	99	11.1
Charleston & Western Carolina ¹																			
Chesapeake & Ohio	2,474	783	824	6.8	37,850	38,367	1.3	890	939	6.8	838,757	837,604	1.1	57,014	62,857	9.5	441	428	3.0
Clin., New O. & Tex. Pac. (Inc. in So. Ry.) ¹																			
Coal & Coke																			
Florida East Coast	765	95	86	10.9	2,914	2,376	22.6	95	86	10.0	27,419	27,234	.7	4,186	3,567	17.4	62	77	19.5
Georgia R. R. (lessee organization) ¹																			
Georgia Southern & Florida	402	35	33	4.8	1,107	965	11.2	38	35	7.0	15,255	12,943	17.9	635	491	29.5	21	21	.....
Gulf & Ship Island	308	30	26	15.4	634	579	9.5	50	40	25.7	9,447	9,110	3.7	873	676	29.1	20	21	4.8
Gulf, Mobile & Northern	402	46	43	6.8	804	666	20.8	46	43	6.6	12,789	10,508	21.7	1,234	1,265	2.4	29	26	16.0
Illinois Central (Inc. Y. & M. V.)	6,200	1,780	1,575	13.0	68,720	59,672	15.2	1,819	1,609	13.0	1,444,238	944,794	21.1	127,520	112,706	13.1	828	884	.7
Louisville & Nashville ¹																			
Mobile & Ohio	1,160	325	281	15.8	8,678	8,048	7.8	398	347	14.9	153,653	122,518	25.4	16,839	15,633	11.9	138	128	7.8
Nashville, Chattanooga & St. Louis	1,237	273	281	3.0	5,944	6,001	.9	322	323	.3	82,392	76,798	7.3	5,383	5,308	1.4	103	104	1.0
New Orleans Great Northern	285	27	26	1.7	633	580	9.1	27	26	2.5	10,631	8,259	28.7	419	651	55.6	12	12	.....
New Orleans N. E. (Inc. in So. Ry.) ¹																			
Norfolk & Western	2,102	1,015	1,011	.5	48,454	48,360	.2	1,397	1,394	.2	1,028,437	1,059,384	2.9	58,923	58,504	.7	791	793	.3
Norfolk Southern	893	71	75	5.2	1,488	1,545	18.6	78	76	1.4	18,659	20,261	6.4	1,567	1,600	2.0	47	44	6.8

¹ Averages based on revenue ton-miles; nonrevenue ton-miles not reported.² Returns not filed.

Atlantic, Richmond & Atlantic P.	5,907	5,417	9.0	1,130	831	36.0	36.2	32.1	12.8	80.1	75.9	5.5	12.9	11.2	15.2	37.9	35.1	15.6	14.8	8.7	1,554.5	8.4	
Atlantic Coast Line	7,387	8,217	10.1	1,438	439	20.9	20.3	3.0	62.3	73.1	74.8	27.2	26.1	4.2	26.2	26.0	6.4	10.1	2.3	6.5	1,683.2	10.2	
Central of Georgia	39,165	40,006	4.1	1,132	1,080	4.8	37.3	35.4	5.4	67.2	73.1	8.1	32.2	32.0	6	37.2	33.6	6.6	8.6	5.8	1,579.3	21.2	
Chesapeake & Ohio																							
Cin. New O. & Tex. Pac. (inc. in So. Ry.) ¹																							
Coal & Coke ¹																							
Florida East Coast	2,968	2,363	25.6	333	380	7.5	19.7	22.4	15.1	51.1	37.4	36.6	32.7	33.5	4.4	44.8	42.0	80.6	49.4	1.9	3.1	442.2	9.2
Georgia R. R. (lessee organization) ¹																							
Georgia Southern & Florida	1,337	1,383	5.3	454	402	12.9	21.1	18.7	12.8	60.1	56.1	7.1	27.6	24.0	15.0	32.1	27.8	4.8	9.5	1.4	3.0	726.4	11.4
Gulf & Ship Island	1,707	1,182	44.4	345	377	8.5	23.8	22.8	4.4	83.6	63.3	32.1	12.4	15.3	53.9	31.7	26.0	10.0	3.0	4.5	472.4	6.5	
Gulf, Mobile & Northern	1,622	1,011	40.7	398	276	11.6	26.1	24.6	6.1	52.5	87.1	8.1	18.9	21.9	13.7	33.2	28.2	27.6	24.0	3.2	2.8	441.0	9.0
Illinois Central (inc. Y. & M. V.)	55,170	53,028	4.0	714	671	6.4	37.0	24.5	10.2	73.2	64.3	13.8	41.5	37.5	10.7	31.3	27.6	10.3	10.0	6.5	6.7	1,381.9	20.7
Louisville & Nashville ¹																							
Mobile & Ohio	9,033	8,572	5.0	524	490	6.9	25.3	22.0	15.0	96.2	90.3	6.5	32.1	31.3	2.6	22.8	22.3	16.7	19.5	14.4	14.4	1,113.4	17.1
Nashville, Chattanooga & St. Louis	6,868	6,969	1.3	322	294	9.5	18.5	17.0	8.8	104.2	103.5	7	28.9	28.7	7	20.3	19.1	17.5	10.6	1.7	5.3	726.9	12.0
New Orleans Great Northern	978	654	49.5	417	341	22.3	27.1	22.8	18.9	74.5	72.6	2.6	21.6	20.6	47.0	35.7	32.5	16.7	16.7	2.8	9	885.9	10.9
New Orleans N. E. (inc. So. Ry.) ¹																							
Norfolk & Western	39,290	35,401	11.0	1,071	1,106	5.8	36.7	37.5	4.8	58.9	58.6	5	41.1	45.5	9.7	37.1	38.4	8.7	6.4	4.6	2.6	1,300.2	26.2
Norfolk Southern	3,065	3,055	1.3	288	291	1.0	18.1	17.2	5.2	55.1	59.7	7.7	15.5	17.9	15.4	20.9	22.8	12.8	9.1	17.3	21.7	403.4	6.1
Richmond, Fred. & Potomac (inc. W. S.) ¹																							
Seaboard Air Line	14,776	15,240	3.0	433	435	5	21.5	18.7	15.0	58.9	59.6	1.8	25.8	26.3	1.9	27.9	24.7	16.6	25.5	12.0	15.0	641.4	10.5
Southern Ry. (inc. A. G. S.-C. N. O. & T. P.-N. O. & N. E.)	61,552	53,983	14.0	499	453	2.9	22.8	20.6	10.7	46.7	42.2	10.7	27.5	26.9	4.8	27.2	22.1	12.2	13.0	2.3	3.0	557.2	12.1
Southern Ry. Co. in Mississippi	1,907	662	37.0	221	155	42.6	23.4	17.4	34.5	49.7	43.0	15.6	13.1	14.0	6.4	28.6	16.2	15.0	28.6	8.5	5.1	279.6	6.2
Tennessee Central	1,034	1,109	6.8	245	228	7.5	21.5	20.6	4.4	62.6	65.2	4.0	22.0	19.5	12.8	27.5	23.8	7.4	3.7	4.3	19.1	370.2	9.7
Virginian	6,599	6,603	8	1,542	1,764	18.6	48.6	53.5	9.8	64.7	61.8	4.7	38.9	36.6	6.3	47.7	47.6	10.5	14.7	3.8	4.8	2,451.2	28.3
Wash. Southern (inc. in R. F. & P.) ¹																							
Western Ry. of Ala. (inc. in A. & W. P.) ¹																							
Yazoo & Miss. Valley (inc. in L. C.) ¹																							
Total	260,065	245,420	6.0	696	699	.4	28.7	27.4	4.7	61.4	58.4	5.1	33.0	33.0		32.3	29.8	12.0	12.2	4.7	5.9	1,060.7	17.6

¹ Returns not filed.

Monthly report of freight operation of steam railways, September, 1917—Continued.

WESTERN DISTRICT—Continued.

Road.	Average oper- ated miles 1917.	Freight-train miles (000 omitted).		Total freight-car miles (000 omitted).		Freight locomotive-miles (000 omitted).		Revenue ton-miles (000 omitted).		Nonrevenue ton-miles (000 omitted).		Average number of freight locomotives in service.	
		1917	1916	% of Inc.	1917	1916	% of Inc.	1917	1916	1917	1916	1917	1916
Spokane International.....	712	56	56	1.3	2,078	1,931	6.5	36,888	32,219	1,161	1,552	42	35
Spokane, Portland & Seattle.....													
Texas & Pacific.....													
Texas & Pacific.....													
Toledo, Peoria & Western.....	1,947	338	420	19.5	8,808	10,241	11.0	357	423	13,615	13,070	198	192
Trinity & Brazos Valley.....	248	21	22	2.3	330	340	4.1	22	23	246	213	15	15
Union Pac. (Inc.) O. W. R. & Vancouver, Shreveport & Pa- cific.....	369	21	24	12.0	366	499	36.7	21	24	201	228	29	37
Union Pac. (Inc.) O. W. R. & Vancouver, Shreveport & Pa- cific.....	7,999	1,908	1,784	7.0	68,126	65,103	4.6	2,241	2,118	135,888	141,101	800	798
Western Pacific.....	171	21	19	10.9	665	490	35.8	21	19	457	396	10	10
Wichita Valley.....	961	197	181	8.6	6,942	5,738	21.0	208	192	9,255	8,052	77	71
Wichita Valley.....	287	16	16	5.5	252	276	8.7	16	16	254	260	8	8
Total.....	126,444	22,632	22,668	0.8	762,468	766,961	3.9	25,056	25,172	1,374,449	1,322,446	12,572	12,392

Road.	Average number of freight cars in service.			Tons per train.			Tons per loaded car.			Average miles per locomotive per day.			Average miles per car per day.			Per cent of empty car-miles.		Per cent of freight locomotives in shop or awaiting shop.		Per cent of freight cars in shop or awaiting shop.		Revenue ton-miles, 1917, per-	
	1917	1916	% of inc.	1917	1916	% of inc.	1917	1916	% of inc.	1917	1916	% of inc.	1917	1916	% of inc.	1917	1916	1917	1916	1917	1916	Freight locomotive (000 omitted).	Freight car (000 omitted).
Arizona & New Mexico.....	191	485	60.6	423	703	29.5	29.7	28.7	3.5	38.9	66.5	41.6	12.4	12.3	0.8	35.8	38.7	0.5	0.2	452.2	7.1		
Arizona Eastern.....	852	1,047	18.6	593	703	14.8	36.0	35.2	2.3	32.5	48.1	35.8	22.5	21.9	2.7	38.9	35.0	1.0	1.4	534.0	14.4		
Atchafalpa, Topinka & Santa Fe.....	57,233	64,832	4.1	563	526	17.0	22.3	20.7	7.7	84.3	80.4	4.9	39.6	38.5	8.5	27.6	24.8	5.8	5.8	1,080.9	16.6		
Birmingham & Garfield.....	1,580	1,154	40.3	1,154	1,384	6.9	64.9	68.3	2.1	92.8	167.0	44.1	20.8	28.6	87.3	48.9	49.4	0.2	0.2	3,030.9	20.7		
Chicago & Alton.....	15,405	12,627	21.3	563	633	6.9	23.5	24.4	4.5	73.5	70.7	4.0	26.7	31.2	11.6	32.0	29.6	8.6	8.6	1,060.8	12.1		
Chicago & North Western.....	79,905	74,143	1.7	564	556	1.4	24.5	23.5	4.3	61.5	60.4	1.8	36.9	34.1	11.6	31.8	27.9	8.8	7.7	842.7	11.4		
Chicago, Burlington & Quincy.....	63,977	60,530	3.4	70	738	1.1	26.0	24.7	5.3	76.3	77.0	0.9	36.3	36.7	1.1	32.5	27.3	9.1	4.4	1,240.4	16.5		
Chicago, Great Western & St. Paul.....	9,158	10,083	9.0	685	738	7.5	22.8	23.0	0.9	76.9	80.2	4.1	29.0	29.3	1.0	21.4	18.2	10.9	5.7	1,294.7	14.8		
Chicago, Peoria & St. Louis.....	73,328	70,070	4.6	507	497	2.0	21.4	18.8	13.8	62.0	68.0	8.8	29.4	35.3	16.7	25.1	24.8	21.6	8.4	750.2	12.4		
Chicago, R. I. & Pacific (Inc.).....	2,113	1,116	49.2	453	442	2.5	26.9	24.1	11.6	71.6	52.1	37.4	21.3	23.5	9.4	24.4	16.4	1.3	1.8	836.8	12.7		
C. R. I. & G.....	47,227	46,063	1.2	450	475	5.5	21.3	21.7	1.9	65.7	64.3	2.2	28.3	29.3	3.4	24.2	23.3	13.0	6.6	7.7	755.5	12.0	
Chicago, R. I. & Gulf (Inc. in C. R. I. & P.).....																							
Chicago, St. Paul, Minneapolis & Omaha.....	14,583	15,540	6.5	473	449	5.6	24.0	21.9	9.6	69.9	78.5	11.0	22.6	22.8	0.9	27.0	24.6	11.5	10.8	7.8	808.6	11.1	
Colorado & Southern.....	7,182	7,358	2.4	420	427	1.6	25.2	26.7	5.6	49.7	48.5	2.5	13.8	17.5	7.4	33.4	32.8	29.3	8.6	10.2	517.4	8.9	
Colorado Midland.....	2,261	1,963	15.8	240	266	9.8	21.3	20.9	1.9	78.7	63.9	23.2	14.7	14.4	2.1	31.7	29.0	12.8	17.0	4.4	16.7	263.0	5.5
Cripple Creek & Colorado Springs.....	537	676	80.6	565	487	16.0	34.4	32.3	6.5	45.8	63.0	87.3	71.2	72.2	1.4	36.1	39.2	12.5	1.5	1.8	309.7	4.6	
Denver & Rio Grande.....	19,799	15,719	25.9	564	565	0.2	26.5	24.6	7.7	36.0	42.2	14.7	18.3	23.7	22.8	28.8	29.8	11.7	12.9	6.1	6.5	469.8	9.5
Denver & Salt Lake.....	1,231	887	38.8	436	412	5.8	31.3	29.4	6.5	44.7	49.7	10.1	30.7	41.1	26.3	43.5	44.2	9.8	11.4	10.7	6.2	345.7	14.3
Duluth & Iron Range.....	6,873	6,740	2.0	1,018	969	5.1	47.5	47.1	0.8	44.0	47.0	6.4	23.4	25.1	6.8	46.5	48.2	9.6	9.5	3.0	3.9	1,295.0	17.7
Duluth, Missabe & Northern.....	9,557	9,747	1.9	1,712	1,681	1.8	47.9	50.3	4.8	84.7	91.8	7.7	38.5	40.9	5.9	45.0	48.4	6.9	9.9	1.5	1.4	4,019.4	30.3
Duluth, South Shore & Atlantic.....	3,427	3,452	0.7	387	342	13.2	25.7	23.3	10.3	79.1	83.9	5.7	15.0	14.5	3.4	29.6	28.1	8.6	12.5	0.9	1.0	760.6	7.8
Duluth, Winnipeg & Pacific.....	4,024	4,572	17.4	491	505	2.8	27.8	28.7	5.1	81.9	88.9	7.9	41.0	37.4	9.6	31.4	34.7	20.5	19.8	3.6	10.1	961.4	19.8
El Paso & Southwestern Co.																							

: Less than one-tenth of 1 per cent.

: Returns not filed.

Monthly report of freight operation of steam railways, September, 1917—Continued.

WESTERN DISTRICT--Continued.

Road.	Average number of freight cars in service.			Tons per train.			Tons per loaded car.			Average miles per locomotive per day.			Per cent of empty locomotives in shop or awaiting shop.			Per cent of freight locomotives in shop or awaiting shop.			Revenue ton-miles, 1917, per-				
	1917	1916	% of inc.	1917	1916	% of inc.	1917	1916	% of inc.	1917	1916	% of inc.	1917	1916	% of inc.	1917	1916	% of inc.	Locomotive (000 omitted).	Freight car (000 omitted).			
Fort Worth & Denver City - Galveston, Harrisburg & S. (inc. in S. P.).	2,385	2,498	4.5	618	461	14.9	22.0	19.7	11.7	50.0	53.5	6.6	38.7	37.3	3.8	29.5	21.9	23.3	11.8	19.6	700.9	16.5	
Great Northern.	56,238	58,294	0.1	833	836	0.4	27.3	26.9	1.5	45.1	46.0	8.0	26.1	28.5	8.4	28.7	30.4	6.6	16.0	5.1	986.3	13.6	
M-St. L. B. & M.) Gulf Coast lines (N. C. T. & M.)	7,448	10,815	31.1	459	461	0.4	21.1	20.3	3.9	72.3	64.3	12.4	36.3	26.6	36.5	29.3	23.4	12.7	24.5	4.0	4.2	12.9	
Gulf, Colorado & Santa Fe.																							
Houston & Texas Central (inc. in S. P.).																							
Houston East & West Texas (inc. in S. P.).																							
International & Great North-ern.	6,954	8,115	14.5	343	355	3.4	19.5	18.9	3.2	68.5	80.6	16.0	22.1	23.0	5.9	25.7	25.3	16.7	14.0	4.5	4.4	594.4	8.2
Kansas City Southern.	5,965	6,837	4.6	683	633	7.9	26.8	22.0	21.8	61.8	51.8	19.3	43.0	37.2	15.6	29.9	23.0	22.9	32.3	8.5	4.4	1,118.5	23.3
Los Angeles & Salt Lake.	4,514	4,297	5.1	441	482	8.5	24.8	26.3	6.7	63.1	58.3	8.2	27.3	27.8	1.8	28.7	27.3	11.7	18.1	1.6	2.2	699.2	12.7
Louisiana & Arkansas.	1,120	996	13.5	370	344	7.6	22.5	21.8	3.2	35.6	39.1	9.0	17.1	18.9	9.6	33.1	31.1	4.5	14.3	1.7	3.8	384.3	7.1
Louisiana Western (inc. in S. P.).																							
Midland Valley.	1,106	1,104	0.4	352	352	0.0	35.6	41.1	15.4	44.6	57.0	27.8	9.8	9.6	2.1	42.4	41.2	20.0	20.0	0.6	0.5	440.2	6.0
Mineral Range.	7,788	9,433	17.4	596	481	5.2	26.4	23.9	10.5	59.9	62.3	3.9	24.8	21.8	13.8	23.8	23.8	10.9	11.6	6.2	6.4	702.4	13.3
Minneapolis & St. Paul.	24,419	23,755	2.8	640	491	10.0	22.4	19.1	17.3	72.8	73.7	1.8	26.4	27.3	4.9	26.4	23.3	6.8	8.2	4.9	4.0	1,127.6	12.8
Missouri & North Arkansas.																							
Missouri, Kansas & Texas lines.	21,999	24,795	11.2	495	416	19.0	21.4	20.3	5.4	50.4	52.8	4.6	28.0	23.8	17.6	31.5	28.6	6.6	18.3	5.2	4.7	618.7	10.7
Missouri, Oklahoma & Gulf.	1,283	1,993	35.6	454	489	7.8	24.7	25.2	2.0	46.2	63.6	37.4	21.0	17.0	23.5	29.0	26.3	26.7	15.4	24.8	12.6	462.2	10.8
Missouri Pacific (inc. St. L., I. M. & S.).	45,742	45,622	0.3	589	599	3.5	24.1	23.0	4.8	76.2	75.2	1.3	29.2	30.8	4.8	28.8	25.9	11.3	11.0	1.4	1.9	1,165.6	13.4
Morgan's L. & Tex. R. R. & S. Co. (inc. in S. P.).																							
Nevada Northern.																							

New Orleans, T. & M. (Inc. in G. C. L. Pacific)	61,614	48,766	5.8	663	719	7.7	22.0	23.2	5.9	54.6	56.8	6.9	26.7	31.9	16.9	25.6	26.8	12.3	11.5	5.2	5.9	869.9	11.6
Northwestern Pacific	1,410	1,630	15.5	216	204	5.9	17.2	16.8	2.4	61.6	64.1	5.9	21.0	18.6	12.9	34.9	33.8	7.1	7.1	0.9	0.7	333.8	6.6
Oregon Short Line (Inc. in U. P.)																							
Oregon-Wash. R. R. & Nav. Co. (Inc. in U. P.)	2,205	2,318	4.9	437	648	40.5	14.5	19.1	24.7	53.5	61.2	4.4	69.5	53.2	30.6	22.6	18.4	15.7	8.3	1.5	2.0	699.3	22.2
Panhandle & Santa Fe	649	706	8.1	350	451	27.4	20.4	23.1	17.7	74.5	85.9	15.5	51.6	47.7	8.2	24.7	18.0	28.5	35.3	1.7	1.8	634.5	21.2
St. Joseph & Grand Island	82,968	34,337	4.0	1,441	1,406	8.6	24.5	22.2	10.4	54.2	66.2	18.1	20.9	23.6	11.4	27.5	29.9	6.8	9.2	6.9	8.7	697.5	11.1
St. Louis-San Francisco																							
St. L., Brownsville & Mex. (Inc. in G. C. L.)																							
St. L., Iron Mountain & So. (Inc. in M. P.)																							
St. Louis, San Francisco & Texas	1,827	2,053	11.0	1,205	1,226	9.5	15.9	17.5	9.5	47.0	35.4	32.8	17.1	10.7	59.8	34.6	25.4	14.7	27.8	9.0	10.5	287.0	5.3
St. L. So. W. (Inc. St. L. S. W. of Tex.)	8,648	7,121	21.4	474	400	18.5	21.1	18.5	14.1	57.7	56.6	1.9	27.9	28.4	1.8	25.5	21.5	7.1	7.6	5.5	7.5	739.9	11.8
St. L. So. W. of Tex. (Inc. in St. L. S. W.)																							
San Antonio & Aransas Pass	36,974	30,914	19.6	626	621	0.8	24.1	24.9	3.2	58.8	57.5	1.5	44.0	48.5	9.5	26.4	27.7	13.6	20.6	5.5	4.8	1,106.0	21.1
Southern Pacific Co.																							
Southern Pacific lines in Texas & La. (Inc. G. H. & S. A. M. L. & T. R. & S. C. L. V. T. & N. O. H. & T. C. H. E. & W. T.)	15,549	18,483	15.9	579	479	20.9	26.9	21.7	24.0	67.8	60.6	11.9	41.9	33.5	25.1	25.9	26.9	17.5	17.9	4.9	2.8	1,198.0	23.7
Spokane International	3,051	1,747	74.6	685	600	14.2	22.9	20.2	13.4	44.6	54.1	17.6	23.7	37.2	39.0	19.9	14.2	4.8	25.7	2.6	4.6	878.3	12.1
Spokane, Portland & Seattle																							
Texas & New Orleans (Inc. in S. & Pacific)	11,546	12,982	11.1	377	323	16.7	20.2	18.9	6.9	60.0	73.9	18.8	26.4	26.3	5.4	28.1	29.8	8.6	7.8	5.4	6.9	575.9	9.9
Texas & Pacific	975	1,078	14.6	245	229	2.5	22.4	19.6	12.6	50.0	50.0	18.3	18.3	14.4	13.2	30.5	23.8	26.7	26.7	12.5	12.7	329.8	7.2
Toledo, Peoria & Western	1,347	1,657	18.7	233	271	14.0	13.3	17.2	6.4	24.2	21.8	11.0	9.1	10.0	9.0	26.2	24.3	44.8	27.0	11.0	16.7	103.1	3.3
Trinity & Brazos Valley																							
Union Pac. (Inc. W. R. & N. Pac. Co. S. L.)	48,974	37,758	29.7	556	626	11.8	22.5	23.9	5.9	93.4	88.5	5.5	46.4	57.5	19.3	30.7	28.3	16.0	15.8	4.1	4.3	1,156.0	18.9
Vicksburg, Shreveport & Pacific	671	657	2.1	477	363	31.4	20.4	18.2	12.1	71.5	64.3	11.2	33.0	24.8	33.1	25.1	21.9	20.0	30.0	10.4	12.8	970.0	14.5
Western Pacific	4,949	2,577	57.5	679	585	16.1	27.0	23.6	14.4	90.2	90.0	0.2	57.0	74.2	43.2	28.8	21.8	7.8	8.5	3.4	5.0	1,615.0	30.6
Wichita Valley	296	427	30.7	128	148	15.5	11.9	11.3	5.3	64.7	66.9	5.5	28.4	21.6	31.5	33.8	24.2	37.5	62.5	7.4	8.0	216.3	5.8
Total	322,837	302,602	2.5	575	570	0.9	23.9	23.1	3.5	66.4	67.7	1.9	30.9	31.9	5.1	28.7	27.0	13.1	15.3	5.7	6.0	926.0	14.1

Returns not filed.

Averages based on revenue ton-miles; nonrevenue ton-miles not reported.

Senator WATSON. You spoke of the intensive loading. What do you mean by that?

Mr. KRUTTSCHNITT. I mean that we adopted a policy of never being satisfied with the loading of a car. If it had 20 tons we wanted them to put on 21, and if we got 21 we wanted them to put on 22.

Senator WATSON. What had been the custom theretofore; that is to say, you had not loaded cars to their full capacity?

Mr. KRUTTSCHNITT. I will give you the results and then the explanation. In the six months the car loading increased from 24.8 tons in 1916 to 27 tons in 1917—about 9 per cent increase.

Senator WATSON. Who determined the amount that should be put into the car, the railroad or the shipper?

Mr. KRUTTSCHNITT. The railroad determined the amount allowable to a car. The shipper determines very largely the amount that is put in. The railroad tariffs prescribe what are called carload rates, a lower rate applying to the full carload, and the full carload is defined in the tariff for different commodities.

Now, it has been our aim, regardless of these tariffs, by persuasion, to get the shipper to give up his advantage of calling for cars to load, the minimum carload—say, 30 tons. We said to him, "We are hard up; the cars are at a premium, and we want to increase efficiency. Now, won't you waive your legal right to put only 30 tons in the car, and fill it up; put in all it will hold?" In some cases shippers have demurred a little because they said that commercial practices really forbade their doing this; that they were accustomed to sell, we will say, in 30,000-pound units and could not very well get away from it. Take some of the cement manufacturers, they have been selling, as I remember it, in 30,000-pound units, and almost universally; they fully loaded the cars and got the averages up to sixty-five, seventy-five, and eighty thousand pounds per car. Take, for instance, the American Sugar Refinery, which ships the larger part of its refined sugar in the United States, and controls the New Orleans refineries, which I think are the largest in the country; they had been shipping 30,000 pounds to the car. At our request, or the request of our local committee down there, they increased their loading until they shipped seventy-five to eighty thousand pounds per car. In other words, one car did the work of two and one-fourth cars theretofore.

The lumber men responded. The grain men were very slow to respond until Mr. Hoover took the matter in hand and issued instructions, which he could do, but we could not, that no cars of grain were to be moved unless they were fully loaded.

Well, the loading jumped up at once from 30,000 and 40,000 pounds to the car to 100,000 and 110,000 pounds to the car. In other words, we got the shippers to cease loading in less than carloads; that is the feature that pulled down the efficiency of the roads the most. The practice had been to send cars with ordinary merchandise—that is, the every-day railroad package freight—with 10,000 and 12,000 pounds to the car. A number of the eastern roads, notably the Pennsylvania, began to adopt what they called sailing dates; that is, instead of sending out a local car for a local station every day loaded with this amount of package freight they would send it out, say, three times a week. In other words, certain days were specified for that car to move, and they increased the load per car

from 10,000 and 12,000 pounds up to 13,000, 14,000, and in some cases to as much as 18,000 pounds.

As soon as that movement was made public by our committee it was taken up by all the roads in the country, and every road that learned of it was desirous of at least emulating the Pennsylvania, and, if possible, going them one better, so we had all the roads of the country matched against one another, and the movement of package freight has been made in carloads, I might say safely, from 14,000 to 18,000 pounds, where formerly 8,000 to 10,000 pounds was the average.

The CHAIRMAN. Mr. Kruttschnitt, let me ask you a question. Senator Newlands, on December 21, addressed Fairfax Harrison an inquiry covering, as I take it, the very points that are being developed by you. Are you familiar with the printed form of this reply to him?

Mr. KRUTTSCHNITT. Yes.

The CHAIRMAN. Is not that substantially the facts that are being set forth by you in this pamphlet?

Mr. KRUTTSCHNITT. Yes.

The CHAIRMAN. It practically covers all the points you are bringing out now?

Mr. KRUTTSCHNITT. Yes; that paper was prepared by us.

The CHAIRMAN. The reason I asked you that is this: That inasmuch as this pamphlet is available to the committee, unless it is desired to go into the details that are already set forth, we might conserve some time by letting each member of the committee acquaint himself with this in its printed form, if that is agreeable to you?

(The pamphlet referred to appears in the first day's proceedings.)

Mr. KRUTTSCHNITT. Anything is agreeable to me, Mr. Chairman, that the committee wishes.

Senator WATSON. Take, for instance, the statement he just made. That statement is not in there at all. I am very familiar with the statement he made in regard to the intensive loading of cars, for instance, and I thought that it was a very illuminating and instructive statement.

Senator UNDERWOOD. Mr. Chairman, I think one of the issues that may be in this bill before we get through with it is how long the life of the policy is to last, and one of the material questions involved in that is whether the railroads break down or whether they do not, whether they would be able and capable of carrying on the business of the country under normal conditions. I think now is a very good time to have all the information that we can get on that question, both for ourselves and for the country.

The CHAIRMAN. Of course, I do not mean to suggest anything except that we want you to conserve as much time as possible, because we are all aware that the country at large is anxious for whatever relief may come, if it can come from the plan which is now being proposed, and it is for the purpose of expediting matters that I made the suggestion.

Senator KELLOGG. It will take but a few hours to present it, I think.

Senator UNDERWOOD. Mr. Kruttschnitt, let me ask you, while we pause—I did not want to interrupt you while you were speaking.

I want to understand more clearly this question of the loading of cars. The minimum carload was fixed by whom?

Mr. KRUTTSCHNITT. It is fixed by the carriers, with the approval of the commission, and is an element in their filed tariffs.

Senator UNDERWOOD. Well, now, what I want to know is, are they fixed by the commission as a matter of law, or fixed by the carriers as a matter of convenience?

Mr. KRUTTSCHNITT. In the first place, it was fixed by the carriers and has been incorporated in their tariffs. After the commission took control that minimum could not be changed without their approval. In the first case, commercial practice and shipping conveniences determined what the minimum should be.

Senator UNDERWOOD. Then, if the minimum, as recognized and fixed by the commission, were 30,000 pounds to a car and a shipper offered you a car loaded with 30,000 pounds, you were compelled to take it and move the car?

Mr. KRUTTSCHNITT. Yes.

Senator UNDERWOOD. You could not force him to increase the load?

Mr. KRUTTSCHNITT. No. Of course, under our duties as carriers we would have to take a shipment from a shipper whether it was 10 pounds, 10,000 pounds, or 30,000 pounds. The only difference was that he paid the 100-pound rate up to the carload minimum. After that he paid the carload rate, which was less per 100 pounds, but we had to take the shipment no matter how few pounds or how many were in it, and if he tendered a car with the minimum carload and demanded the carload rate he had to have it, and, really, under the authority that we exercised we could not reduce that part of our expenses. The only way we got around that was by personal contact, by asking him to help us and help himself and help the country, to waive his rights, and put more in the car.

Senator UNDERWOOD. Now, if he tendered you a car with a carload of 30,000 pounds in the car did he pay the same price for moving that car as if he had loaded 60,000 pounds in it, or did you get a larger return for a 60,000-pound carload?

Mr. KRUTTSCHNITT. We got a larger return, of course, at the carload minimum rate.

Senator UNDERWOOD. Will you explain that, please, so as to make it clear?

Mr. KRUTTSCHNITT. If a man offered 10,000 pounds for shipment and put it in a car, under our duties as carriers, we had to take it, and it was taken at the rate per 100 pounds. If he had a minimum carload to ship, say, 30,000 pounds, we had to take it and move it, but he was given the carload rate, which was a less rate per 100 pounds than the less-than-carload rate. If by persuasion he put 60,000 pounds in the car, he paid twice as much as he did for 30,000 pounds and the road, of course, got the double revenue. There is no concealment made of that fact. We told him that it was to our advantage, of course, to get more load in a car.

Senator ROBINSON. But you also moved more commodities?

Mr. KRUTTSCHNITT. We also moved more commodities, and it was to his advantage, because he was helping to make the facilities go farther than they otherwise would, and he was helping the country by doing the same thing, by conserving and using in the most economical and efficient manner the transportation facilities that were

available and which, under the present circumstances, really can not be increased.

Senator UNDERWOOD. Now, let me ask you another question along that line, to get the balance in my mind. How much does the average modern freight car weigh, unloaded?

Mr. KRUTTSCHNITT. Well, say take a box car?

Senator UNDERWOOD. I mean a box car.

Mr. KRUTTSCHNITT. The highest type of box car is one that carries 110,000 pounds. It weighs, empty, from 42,000 to about 46,000 pounds, depending on the details of construction.

Senator UNDERWOOD. That 42,000 pounds had to be pulled by the engine, and it took that much engine power, whether it was loaded with 100,000 pounds or 10,000 pounds, and therefore when a small load was placed in the box car you lost that much engine power for transportation?

Mr. KRUTTSCHNITT. Quite right; that is the proportion of paying on live load to dead load. It was small with the small load, and as you increased the load in the car, the proportion of the live load to dead load increased very rapidly, and I would say, incidentally, that the American Railway Association has a committee engaged at present on that very subject—that is, to design the best possible box car of ample strength, with minimum weight, because, as you very pertinently show by your question, any unnecessary dead weight pulled around, whether the car be empty or loaded, consumes power, money, and effort.

Senator UNDERWOOD. That was all. I just wanted the record to show that.

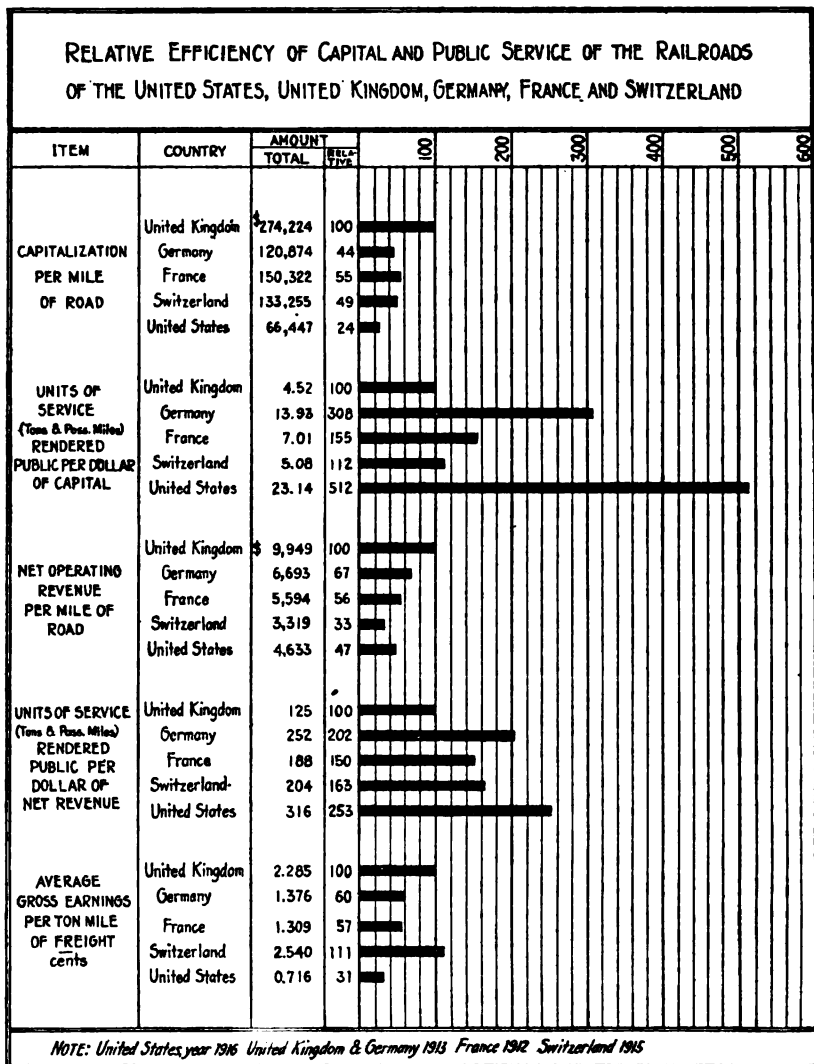
Senator McLEAN. You put in a statement showing a large increase in tonnage moved by the American carriers in 1917, over that of previous years, and you compared that with the tonnage moved by the nations of Europe. Have you made any comparison of the rate per ton-mile charged by the American carriers to that of the European carriers?

Mr. KRUTTSCHNITT. Yes. Here is a statement that I prepared seven or eight years ago, and which I brought up to date just before coming here, that covers the question you ask. I will point out the answer to the question on this diagram, and then I will leave it with the stenographer. Here are the earnings of the European roads, the average gross earnings per ton-mile of freight in cents. In the United Kingdom it was 2½ cents, and that is used as the basis figure of 100 for comparative purposes. In Germany it was 1.37 cents, or 60 per cent of the United Kingdom; in France it was 1.3 cents, or 57 per cent of the United Kingdom; in Switzerland it was 2½ cents, or 111 per cent of the British rate, and in the United States it was 0.71 cents, or only 31 per cent of the British rate. That, I think, answers the question. I will leave this with the stenographer.

(The diagram referred to is printed in full on page 260.)

Mr. KRUTTSCHNITT. Well, continuing to describe the activities of our committee, one of the most useful things we accomplished was to coordinate exportations. The congestion on the Atlantic seaboard is due largely to unintelligent overloading of the roads that carry freight to the Atlantic seaboard. Perhaps overloading is not a sufficiently illuminating term. It means overtaxing the capacity of

terminal yards and terminal facilities. Our committee called a meeting of the chairman of our commission on car service, a special representative of our committee, together with representatives of the United States Army, Navy, Shipping Board, Food Administration, the British minister of shipping, and the traffic representative of the allied Governments. These gentlemen were those who were



shipping freight in the largest quantities over the railroads. We got them to agree to sit on a coordinating committee on exportations, the object being to prevent the movement of freight to the Atlantic, Gulf, or Pacific seaboard unless there were ships there to accommodate the freight. The ships, as described yesterday, had been driven from the oceans by the German submarines. Those that were

not frightened were in use by Great Britain and her allies in transporting troops, and there were very few ships left in which to ship freight, and the coordinating committee did a vast amount of good in preventing the movement of freight, so far as they could do it, to the seaboard before there were bottoms there ready to take it.

Senator WATSON. In that connection what, if anything, did you do with reference to diverting the traffic from New York to southern ports?

Mr. KRUTTSCHNITT. About a month or six weeks ago, at the time this congestion of the trunk lines first became evident, we took up with the Food Administrator the diversion of 3,500 carloads of freight that were then waiting, principally at St. Paul and Minneapolis, laden with flour and grain, from this congested area to the Gulf coast ports. Our records show that the elevators at the Gulf ports were practically empty; that New Orleans, Galveston, and Mobile had very large elevator capacity that was not used at all. Mr. Hoover took the matter up at once and ordered these 3,500 cars diverted from New York and Baltimore down to the Gulf ports, where there was ample room to handle them, and relieved the situation very, very greatly, and that he has continued to do ever since.

The CHAIRMAN. You would have had no power to have done that if there had not been the power granted in the food administration bill for Mr. Hoover to give you the order?

Mr. KRUTTSCHNITT. Quite right. We never could have done it. Mr. Hoover, with the strong arm of the Government behind him, could do it—could order it. All we could do was to ask, and the consignees would comply or not, as their interests dictated.

Senator POMERENE. You could have done that under the agreement authorizing you to direct the freight, could you not?

Mr. KRUTTSCHNITT. No.

Senator POMERENE. As I understood you, you had a car service committee connected with your war board, and that it directed the movement of these cars?

Mr. KRUTTSCHNITT. No; we had no right to disregard the routing right of the shipper. That was a right given him by the commission, and we had to respect it, and the only way in which we could disregard it was by his consent; and afterwards, when this congestion got so bad in the eastern territory that no freight could be moved, we then simply assumed the right of sending the freight, regardless of routing, over any road that could carry it to its destination. That, however, was a temporary measure taken to relieve the congestion on the trunk lines.

Senator POMERENE. Do I understand that your instructions, then, with reference to the movement of cars, applied to empties rather than to loaded cars?

Mr. KRUTTSCHNITT. The control over the empty cars was absolute, because no relations with the shipper were involved in moving empty cars; but when the car had something belonging to a shipper in it, and he wanted it to go, say, by the Baltimore & Ohio to Baltimore, we could not say that instead of going that way, we are going to divert it, we were going to send it by the New York Central to New York or to Boston.

Senator UNDERWOOD. As I understand it, Congress has passed a law giving the right to the shipper to direct the routing of freight? That is a law, is it not?

Mr. KRUTTSCHNITT. I do not think it is a law.

Senator WATSON. It is rather an order of the Interstate Commerce Commission?

Mr. KRUTTSCHNITT. It is a right given him by the Interstate Commerce Commission, or, rather, to put it another way, there was a time when we disregarded the instructions of the shipper and exercised the right to send the freight east by the roads with which we had the closest connections, the matter was brought up in the courts and the courts ruled against us, that we could not continue the practice.

Senator UNDERWOOD. My recollection of it, Mr. Kruttschnitt, is that Congress some years ago passed as a part of the interstate commerce act a provision that allowed the shipper to designate to the railroad how he wanted his freight routed to its final destination, and if he did make that designation, they had to ship it in that way, under penalty of law.

Mr. KRUTTSCHNITT. Perhaps it was afterwards enacted into law, but I think it was first established by litigation.

Senator CUMMINS. That was put into the act in 1910, and applies only, of course, where the freight is shipped over two or more roads.

Senator UNDERWOOD. Of course if it was only shipped over one, it would naturally have to go over that one.

The CHAIRMAN. What effect, Mr. Kruttschnitt, did that have upon your efforts to mobilize the transportation facilities in this country? What we call crosshauling, which is another way of expressing the right of the shipper to route his freight, what effect did it have upon your attempt to relieve the congestion?

Mr. KRUTTSCHNITT. Well, this crosshauling, particularly of coal, was one of, if not the controlling influence that has brought about this congestion on the eastern roads. There is absolutely no control of crosshaul. The War Board, six or eight weeks ago, I think, in the latter part of November, had a conference with the Fuel Administrator, and called his attention to the waste of transportation by crosshauling of coal, and recommended that he issue orders that would stop it, and he asked us if we would not work up a plan and submit it to him. We did so, and submitted that plan, I think, early in December. It was very carefully worked up, after the fashion of the English plan, which you have no doubt seen, by which the routing of coal from one producing district to a consuming district is marked out, and the principle on which the maps were drawn was that any consuming district should get its coal, regardless of its wishes as to quality of coal, from the nearest coal-producing district. That, of course, cut off the crosshaul, but nothing has ever been done about it. We urged action on it, but no action has been taken.

Senator WATSON. You had no power to enforce action?

Mr. KRUTTSCHNITT. Oh, absolutely none.

The CHAIRMAN. To what extent did that prevail in other shipments? You have mentioned coal as the principal one.

Mr. KRUTTSCHNITT. Well, coal was the principal one, because its tonnage is so great. No doubt the crosshaul existed as to other com-

modities, but the crosshauling was not as potent an influence in bringing about this congestion as the crosshauling of coal.

The CHAIRMAN. I thought perhaps you might have some figures to show, or some data to give the committee, in reference to munitions and supplies to be exported abroad.

Mr. KRUTTSCHNITT. I was going to come to that, but I will answer that question now, that the next most potent influence in bringing about this congestion was the indiscriminate use of a preference envelope by shipping agents of the War Department. At the beginning of the war, in conference with the Quartermaster Department of the United States Army, the railroads printed what they called a blue envelope, and freight on any waybill or bill of lading inclosed in the blue envelope, which was clearly marked "United States Government service," was given preference, it being understood by the Quartermaster Department of the Army that whenever that envelope was used there would be no question about the preference. If it was marked "Government service," it would be rushed. Now, the Army because of the vast tonnage which it was shipping and the great number of officers charged with shipping freight, got to using those envelopes for a great deal of freight that did not require preference movement. In other words, it was used for everything that the Government bought, and abuses crept in thus, we will say, a manufacturer who was turning out 10,000 tons might have been turning out a thousand for the Government and 9,000 for the general public, yet he would get preference envelopes to use for the Government shipments and he would use these preference envelopes for his whole output.

Senator ROBINSON. That same system has prevailed in the shipments to a large number of cantonments throughout the country.

Mr. KRUTTSCHNITT. Of course the railroad was helpless. We can not go behind the blue envelope and investigate when the freight is tendered covered by these bills of lading asking, "Is this really Government freight? Is it vouched for by So-and-so?" You have got to trust the men to whom these preference envelopes are given, and if they will let them slip out so that Tom, Dick, and Harry can use them, the result is just what you have seen. One of the trunk lines estimated that 85 per cent of the total tonnage they were handling, including coal, was covered by these blue envelopes. You can imagine the state of mind of a yardmaster at a terminal, say, like Pittsburgh, when he was confronted with the freight covered by all of these blue envelopes, and covered by other orders giving priority of transportation to different commodities, he would be a fit subject for an insane asylum; he would not know how to get around his work.

Senator ROBINSON. Everything that came in had a priority.

Mr. KRUTTSCHNITT. Pretty much everything, and it resulted, in this, that if everything had preference nothing had preference—it simply congested the roads.

Now, those two influences were the principal ones that have brought about the congestion on the roads east of Chicago and north of the Ohio and Potomac Rivers.

Senator POMERENE. In the case of that railroad that had 85 per cent of preference freight, what proportion of that 85 per cent was given for Government supplies, and what proportion not? I will

put it in another way. What portion would have been legitimately entitled to this preference?

Mr. KRUTTSCHNITT. I do not think the carrier itself could say that, and I certainly am not in a position to say it. It was simply an estimate of the freight covered by preference orders, that it was given on the war board.

Senator POMERENE. Of course, I understood you, in a statement you made, to say that anything would be rather an estimate than an exact statement.

Mr. KRUTTSCHNITT. I never heard the estimate made that way. I want, however, to have you understand clearly just the difference between priority orders and preference orders. The preference order was this blue-envelope system, devised by the carriers and the Government departments to insure proper attention on the part of the carriers' employees to Government shipments. In addition, there were priority orders that originated with Mr. Lovett as priority commissioner, and with Dr. Garfield as Fuel Administrator, and this 85 per cent covered not only the blue-envelope freight but also the freight covered by the priority orders, and these two methods—

The CHAIRMAN. Did the Government officials undertake to direct the route of any of the Government's preference orders or priority orders?

Mr. KRUTTSCHNITT. Of course, they would have the right to do that, but I do not know to what extent they insisted on the right.

The CHAIRMAN. You do not know, or they did not, so far as you know, indicate the route over which it was to go?

Mr. KRUTTSCHNITT. Normally, I think they would have done that. They had the right to do it, but the Government officers cooperated with us, and I am quite certain in case of trouble they would have waived their technical rights; but, of course, you understand that the route sometimes is determined by the port of destination. If they wanted it to go to New York we could not send it to Baltimore, and if they wanted it to go to New York by one certain route, and there were three roads to New York, we could probably get them to allow us to send it via the most available route to New York.

Senator ROBINSON. But you had no authority to send it by the most available route unless they did consent to it?

Mr. KRUTTSCHNITT. We assumed that authority when this congestion east of Chicago occurred, because we assumed that if we had freight and could not send it the way directed, and we could send it some other way, we were doing the shipper a favor by sending it some other way rather than by not moving it at all.

Senator KELLOGG. You did it by the strong-arm method; you simply went in and did it?

Mr. KRUTTSCHNITT. We simply did it and took our risk of lawsuits with the shippers of freight. I do not think that risk was great, but still it existed.

Senator KELLOGG. On that question of priority orders, prior to the act of August 10, 1917, the interstate commerce law provided "that in time of war or threatened war preference and precedent shall, upon the demand of the President of the United States, be given over all other traffic for the transportation of materials of war, and carriers shall adopt every means within their control to facilitate and

expedite the military traffic, and in times of peace shipments consigned to agents of the United States for its use shall be delivered by the carriers as promptly as possible and without regard to any embargo that may have been declared, and no such embargo shall apply to shipments so consigned."

That was the law in existence as to the shipment of materials of war. Now, on August 10, 1917, the Congress passed a bill providing "that during the continuance of the war in which the United States is now engaged, the President is authorized, if he finds it necessary for the national defense and security, to direct that such traffic or such shipment of commodities as in his judgment may be essential to the national defense and security, shall have preference or priority in transportation by any common carrier, by railroad, water, or otherwise."

I am sure it was the intention of Congress to place in one hand the power to direct preference or priority of shipments, but, as I understand you, notwithstanding that the War Department and the Navy Department, the Food Administration and the Coal Administration gave indiscriminate preference orders.

MR. KRUITSCHNITT. The understanding of the war board, Senator, was substantially your own; that is to say, we supposed that when that priority act was passed that the man charged by the President with administering his duties under the authority of the act would determine priority for everything. Prior to that we had been acting under the clause you read from the interstate commerce act. That is, we simply took it for granted that officers of the War Department and the Navy Department, all of whom were under the President as commander in chief, were under his orders, and anything that those departments wanted shipped we ought to give preference to, according to that law, and even after the passage of the priority bill we continued doing that.

Now, when this flood of preference envelopes threatened to swamp us, we had a meeting with Mr. Lovett, who was priority commissioner, and we told him of our troubles with the departments, particularly the War Department, because there were more men shipping and more goods shipped, and they were using these preference envelopes in such numbers that they were getting beyond our control. We asked him if he would not take charge and straighten that matter out, and he said that he did not understand that it came under him. We had quite an argument about it. We wanted him to help us to that extent, and he said he could not; that it did not come within his purview, and also, if I understood him correctly, that his duty was simply to establish priority of movements as between different commodities, and he could not undertake to say that some things should be shipped and some should not. However, he was so impressed with our difficulties that he said he would take the matter up with the Secretary of War, and he told us a few days after that that the Secretary of War recognized the difficulties under which we were laboring and would have the matter straightened out, but nothing was ever done until Mr. McAdoo took charge. When we explained the troubles with these preference orders, he at once appointed Mr. Chambers to coordinate all shipping facilities of the Government, and Mr. Chambers is now performing those duties.

Senator WATSON. Is there the slightest doubt that the Government had absolute power to correct it then?

Mr. KRUTTSCHNITT. We thought so, Senator, and went at it in what we thought a direct way, but with the result I just described.

The CHAIRMAN. You mentioned a moment ago that you had a custom whereby you could interchange box cars, but you did not interchange the motive power or the crews. Now, you said you had deflected certain shipments so as to get it to the consignee as soon as possible. You have no power under the law to use any of your equipment over another road and then prorate your earnings? I mean you have no right to pool with another road any service that you may render by motive power or crew service and carry the freight over another road and then get your pro rata share of the freight, I mean?

Mr. KRUTTSCHNITT. There are two angles to that question. There is no legal prohibition against using or diverting equipment, or even locomotives, from one road to another. That we did when it was necessary, but it never became necessary to divert locomotives. The first trouble developed with the lines east of Chicago, and when it did we appointed a special committee to sit in Pittsburgh to study that situation, and one of the first things they said was this:

These roads are short of locomotives. They have the men sufficient to keep their locomotives running without delay and we are asked for help as to locomotives.

Our board at once took up the question with our western constituents; in other words, the ones that were not troubled with congestion. The eastern lines asked at once for 100 locomotives. We adopted the methods of the selective draft. We simply enumerated the locomotives on the western lines that are not congested and ordered them rateably to contribute to this fund of 100 and to ship them at once to Chicago and St. Louis. That order was promptly obeyed and the locomotives were sent. Some gentlemen attempted to argue that their necessities were as great as those on the eastern lines, but those objections were swept aside. We told them, "We can not recognize your claims to keep your power. These roads in the East need it worse than you do, and our judgment must prevail, and you must send the locomotives," and they did. They were all sent.

In addition to that, the United States Government had a large number of locomotives completed, destined for the military railroads in France. We were allowed to take, I think, 90 of those locomotives, which were distributed over these eastern lines to help out the situation.

Then the American builders—that is, the Baldwin and American Locomotive Works—had completed 80 or 90 very good freight locomotives for Russia, and they did not know what to do with them on account of internal troubles in Russia. They were lying here idle, and we arranged with them and the congested roads to get some—I think it was 90 or 95—of the Russian locomotives, so in all those eastern roads were given somewhere around 300 locomotives to help out.

Then the Virginian road and the Norfolk & Western, which are heavy coal carriers, reported a shortage of power and we at once impressed 25 locomotives, the number they wanted, from southeastern

lines that were not congested and turned them over to those two roads, so in all you might say we have provided 325 locomotives to contribute to the relief of these congested lines.

The reason these congested lines could not help themselves was that they had orders in for a great number of locomotives to be delivered this year, but after our country entered the war the French needed locomotives in large numbers—as I remember it, about 2,600—and the locomotive works were ordered by our Government's agents to ignore the American orders to advance the French orders and to deliver them first. Then the Russians wanted a thousand or more locomotives, and the same thing was done, the American orders were pushed back and the Russian orders put ahead. The British got about 300, so that in all over 4,000 locomotives for our allies were ordered, and the American works were speeded up to deliver these and hold back on the American locomotives.

Senator WATSON. What is their capacity a year?

Mr. KRUTTSCHNITT. They said it was 5,500 locomotives a year. The result was that the American roads still have about 3,200 or 3,300 locomotives, and about 40,000 cars on order that they have not yet been able to get. The cars they could have gotten but for the difficulty of the car works in getting steel. There was sufficient capacity in the works to turn them out, but they could not get the steel.

Senator WATSON. What is the likelihood of obtaining those locomotives and cars now?

Mr. KRUTTSCHNITT. Very good, Senator, for the reason that, as I say, on account of the revolutionary troubles in Russia, the locomotive works do not know who is going to get and pay for them, and naturally they have held them back, and in that way we have gotten the use of 90 or 100 of these locomotives. The Government locomotives for General Pershing's roads have been turned out faster than they were needed, and they were waiting here for vessels. In that way we got somewhere in the neighborhood of 90 of those locomotives turned over to us, and that relieved the works and they were no longer pressed for the Government locomotives, nor for the Russian locomotives, and they said, "We are now in position to take up the American orders," and they took them up.

To help the eastern roads further, the war board took the order sheets of the American locomotive builders, and wherever locomotives were due in the early part of 1918 to the western lines that were not congested, the locomotive builders were asked to delay deliveries to the western roads and to advance the deliveries to the eastern roads that needed them worse than the western roads. And in that way we got 165 locomotives for very early delivery for the congested lines, and we took the chance of letting the western lines wait, because they were in a better condition; there were none of them congested. That means, Mr. Chairman, that we took and shifted power around to provide for the roads that were hard up for it.

The CHAIRMAN. The point I wanted to bring out was that, as I understand it, you had no power, and in fact you are prohibited by law from pooling your freight and distributing it over the roads, and then prorating whatever the earnings might be; in other words, you are prohibited from pooling the roads for the disposition of freight.

Mr. KRUTTSCHNITT. And then dividing up the earnings?

The CHAIRMAN. And then dividing up the earnings.

Mr. KRUTTSCHNITT. Yes; we were prohibited by law from doing that, but in the case of this congestion we assumed that we would have the right legally to do what any road does at the time it is washed out or wrecked. If road A has a washout, as in the case, for instance, of the Ohio floods, there is no prohibition against the temporary use of lines B, C, and D, to get that freight moved, and the freight is moved, not on a pool, but on a prearranged tariff of charges. It is not pooling. And in the case of the jam at Pittsburgh, we assumed that the congestion of the roads east of Pittsburgh, where they could not move the freight, was identical with those roads that had been cut to pieces by the flood. In other words, they were unable to move freight, and the law did not prohibit us from moving that freight, not on pooled earnings, but on the earnings that accrued.

The CHAIRMAN. This congested condition had to arrive before you would be justified in using that discretion?

Mr. KRUTTSCHNITT. Exactly. That is the point exactly.

The CHAIRMAN. What effect would it have had if you had that power to pool your interests, in avoiding congestion?

Mr. KRUTTSCHNITT. It would have had a very good effect. To show you how careful we had to be, at the time we proposed to exercise that power the press got hold of what we intended to do and proclaimed very loudly that the roads were disregarding the law and were going to pool freight, and we got a letter at once from the Attorney General's office asking for information on what we proposed to do. In other words, he was evidently worried at the thought that the railroads were going to deliberately disregard the law. We assured him in a letter of explanation of what we were going to do, and that apparently satisfied him, but it was very evident that the officers of the Government were watchful and they would not wink at any infraction of the law.

Senator WATSON. Let me ask you when that was. Was that since we got into the war?

Mr. KRUTTSCHNITT. Oh, yes; that was at the time of the Pittsburgh—and I say Pittsburgh congestion because that was the center of it, when that developed. That was, roughly, two months ago.

Senator WATSON. Have you those letters, Mr. Kruttschnitt?

Mr. KRUTTSCHNITT. No; I do not know where the archives of the war board are now. I do not know who has them. I suppose Mr. Holden probably has them.

Senator McLEAN. Apparently it is your opinion that if it had not been for the law limiting the car tonnage and the rule against pooling, and the blue-envelope preference orders that the present conditions would have been much less uncomfortable?

Mr. KRUTTSCHNITT. Very, very much less so.

Mr. THOM. Before you resume your statement, you have been asked about the diversion of freight to southern points and to Gulf points, southeastern ports and Gulf ports. Of course the ability of the rail carriers to usefully carry traffic to these ports depends upon whether there are ships at those ports to receive it, but whether or not there were ships is not a matter within the rail carriers' control, is it?

Mr. KRUTTSCHNITT. No; the rail carrier has no control whatever over the movement of ships, and when the diversion of freight to the

Gulf ports was made by an understanding with the food commissioner, the food commissioner took up with the Shipping Board and with the agents of the lines who were furnishing ships the question of having ships go to Gulf ports instead of Atlantic ports.

Mr. THOM. Of course that was necessary, preliminary to the ability of rail carriers to divert freight to southern ports?

Mr. KRUTTSCHNITT. Unquestionably. If there had not been ships there to receive the freight it would have simply transferred the congestion to Gulf ports, or, rather, increased by super adding it to the congestion at Atlantic ports.

(Whereupon, at 11.15 o'clock a. m., a recess was taken until 2.30 o'clock p. m.)

AFTER RECESS.

The committee reassembled, pursuant to the taking of recess, at 2.30 o'clock p. m., Senator Smith of South Carolina (chairman), presiding.

STATEMENT OF JULIUS KRUTTSCHNITT—Resumed.

Senator WATSON. Mr. Chairman, if Mr. Kruttschnitt has not yet finished his statement, I would suggest that he do so.

The CHAIRMAN. The committee will come to order. Mr. Kruttschnitt, you may proceed with your statement.

Mr. KRUTTSCHNITT. I will just touch briefly, Mr. Chairman, on the points that have not been covered. I had a good many notes made here, some of which are answered now because of the questions which have been asked.

One of the subcommittees of the War Board was the Committee on Accounts. This committee, in collaboration with the War and Navy Departments, originated very simple methods of accounting for the freight and passenger traffic conducted on Government account. It did away with an endless amount of red tape; it did away with a great deal of accounting and facilitated and expedited settlement with the carriers by the Government. In the mobilization of troops to the Mexican frontier two years ago there was a time when the Government owed our own company about \$2,500,000 for services rendered, which was 18 or 20 months overdue. No such condition has existed in the present mobilization, I am glad to say.

Senator POMERENE. Explain why that was so.

Mr. KRUTTSCHNITT. Partly on account of the system of accounts and partly on account, as we were assured by the Army officers, that there was no money available.

Senator POMERENE. You mean accounts of the railroad companies or accounts of the Government?

Mr. KRUTTSCHNITT. Accounts of the railroad companies against the Government for services rendered. The Government did not pay those without careful check, and we understood at times they did not have the force, and then, after the bills were checked, that they did not have the money available.

Senator POMERENE. I am afraid my question was not clear. Was it because of the methods of bookkeeping of the railroad companies or the methods of bookkeeping and accounting of the Government?

Mr. KRUTTSCHNITT. Well, we rendered the accounts promptly enough, so I suppose our methods of bookkeeping were all right.

Senator POMERENE. That explains it.

Mr. KRUTTSCHNITT. Our subcommittee on car designs presented, at the request of the Government—that is, for the War Department and the hospital department—complete designs of armored cars and special equipment for hospital and troop-train service, and also built sample cars for them. Complete routing charts for the use of the Government in moving troops were gotten up, under which 2,050,000 troops were moved up to the date of this memorandum, such manner as to merit the commendation of the Quartermaster General, Gen. Chauncey Baker, in this language, at the time when 1,000,000 troops had been moved:

One million troops have been mobilized without the slightest disturbance to commercial traffic, and if the public knew what the railroads have done, the self-sacrifice, and the long hours the various heads of the road have put in, there would be no criticism.

Secretary of War Baker said, commenting on the work done by the railroads connected with the mobilization:

Figures now available show that since early in August, when large troop movements began, the railroads have transported over half a million soldiers to various points without any serious derangement to regular passenger service, and at the same time have absorbed an enormous freight traffic brought on by war conditions. This practically illustrates the patriotic cooperation of American railroads with the Government, and also the tremendous capacity of American railroads.

That was an interview with the Secretary in New York on September 24.

The war board has also created a committee on express transportation, made up of the operating vice presidents of the four express companies. It moved in the building of the cantonments and on account of the Shipping Board a total of 145,000 cars of material in such a way that Col. Littell, in charge of the cantonments, said on September 5:

In the construction of the cantonments, to date, 50,000 carloads of material have been transported and delivered at the sites, an enormous tax on the already overburdened railroads of the country. The railroads, however, have given splendid service. All Government orders have been given precedence, and lumber and other supplies needed have been rushed to the cantonments in record time.

I think I have gone over pretty generally the things that the war board did. Some of the things that it had hoped to do I will go over very quickly, because they were touched on this morning. To abolish the cross haul of coal, nothing was accomplished, because the report, on which a great deal of time and a great deal of talent was used, was not acted upon. Indeed, it has not been acted upon up to the present time. Then it hoped to remove a fruitful cause of congestion by securing coordination of Government shipping agencies. That was recommended to the Director General in our interview with him on the day after he assumed charge, and, as I said, that has been corrected by the appointment of Mr. Chambers as the traffic director or director of transportation.

It had hoped to get still greater improvement in the loading of freight cars and locomotives. It hoped to cut passenger business

very greatly by the imposition, through the appropriate agency, of sufficiently restrictive rates or to take off trains, as the case might be. That, as you know, has since been done by the Director General. To increase the common use of terminals of one carrier by another. The common use of terminals had been granted by one carrier to another very extensively, particularly west of the Mississippi River, and it is being done more and more east of the river. There was no law to prevent it; it was not pooling. It was simply the rental to one road by another of its terminal facilities. We had hoped to interest the Federal authorities in the paramount necessity of providing and conserving railroad labor, which we will refer to hereafter in greater detail.

Some of the things that have hampered the board I have touched on already. For instance, in the greater expedition in the movement of freight there was the handicap of moving the 2,050,000 troops. There was an increase in passenger business by 23 per cent in October of this year over last. There was a large increase in mails and parcel-post traffic. That has disorganized passenger traffic more, even, than the percentage of increase would indicate, because it delays the trains at transfer points and passenger stations, and there has also been a very large increase in express traffic of about 20 per cent.

Senator POMERENE. Does it delay the traffic more than if those parcels were sent by express?

Mr. KRUTTSCHNITT. Yes; because there is more transfer. There are cases on the Southern Pacific where passenger trains were held up at terminals—by terminals I mean the intermediate passenger and freight terminals, about 125 miles apart—on the demand of the postal clerks to stop the trains and transfer the mail and parcel post from one particular car to another. We have had delays of 20 or 30 minutes to do that.

The need of power I have touched on. The reason why we did not get our power in time I have also explained. A fruitful source of trouble in the movement of freight was caused by the impressment by the Government of steamships engaged in coastwise traffic. The Southern Pacific Co. had a fleet of 26 ships engaged in coastwise traffic between New York on the one hand and New Orleans and Galveston on the other. The Government had taken, up to about a month ago, 10 or 11 of these ships. They have taken ships from the Ocean Steamship Co., whose ships ply between New York and Savannah, and the Clyde Lines, the Texas Lines, and Florida Lines—taken from them ships of a capacity in tons of freight per year of about 1,000,000 tons. That freight was taken off the ocean and thrown onto the overburdened carriers on land, and they have had to carry it some way or other.

Senator WATSON. Did they take those ships for trans-Atlantic purposes?

Mr. KRUTTSCHNITT. Yes; at least some of ours have been taken for transport service. One of them has been sent down to the west coast of South America on freight business for the Government. Some have been taken for tenders for the Navy. We have two tank ships and the Navy took one of those as a tender for war vessels.

The New York, New Haven & Hartford, Boston & Albany, and Boston & Maine railroads, the three railroads serving New England,

have actually transported 2,817,000 tons more of anthracite and bituminous coal into New England this year than last, in response to the needs of that part of the country. Those shipments have heretofore been taken care of by ocean carriers—that is, ocean tugs and barges plying between New York, Philadelphia, Baltimore, Hampton Roads, and New England ports.

The transcontinental roads have had a largely increased duty thrown on them, by all ships abandoning the Panama Canal route. In the first year that the canal was open, from September, 1914, to August, 1915, substantially 2,000,000 tons of freight were handled between Atlantic and Pacific ports through the canal. After the breaking out of the war the rates on steamships for trans-Atlantic trade were such that these carriers all dropped the canal route and went into trans-Atlantic business, and these 2,000,000 tons of freight were then thrown onto transcontinental railroads and had to be carried.

Senator TOWNSEND. I did not understand, Mr. Kruttschnitt, why the railroads stopped their ships at that time. Is that what you said?

Mr. KRUTTSCHNITT. We did not. The Government took them. The Government impressed them.

Senator TOWNSEND. I understood you to say that you did?

Mr. KRUTTSCHNITT. No. We had a fleet of about 26, and the Government has taken, as I remember it, 10 or 11, up to date, but the percentage of carrying capacity of those 10 or 11 was much more than the percentage determined by their mere number. Unfortunately they took the largest and finest. Now, this transcontinental freight thrown on the roads in addition to what they were handling was equivalent to the monthly use in that service alone of 46,000 freight cars and 619 locomotives. In other words, although the roads were handling such a very large amount of freight, they were compelled to do what was equivalent to retiring 46,000 cars and 619 locomotives from their equipment alone, to handle this additional freight thrown on them by the closing of the Panama Canal.

Senator POMERENE. Let us get a little more definite statement about that, if we can.

Mr. KRUTTSCHNITT. 2,000,000 tons of freight had to be carried across the continent.

Senator POMERENE. You have given the number of freight cars which were used and the number of locomotives which were used in the transportation of that 2,000,000 tons of freight. Now, how long would they be occupied?

Mr. KRUTTSCHNITT. Constantly.

Senator POMERENE. During this entire period?

Mr. KRUTTSCHNITT. Yes, sir. In other words, we have figured the ton-mileage thrown on the carriers by the transportation of 2,060,000 tons of freight from the Pacific to the Atlantic coast, and we have divided the monthly ton-mileage by the monthly service of a locomotive and a car, and it has produced this result.

The roads are finding it increasingly difficult to keep up their equipment, and particularly locomotives, on account of the shortage of skilled labor. The selective draft and the attractions offered by such rates paid in munition and Government plants, as most of the roads are unable to meet, has resulted in a depletion of the shop

forces of the carriers. In some cases they have lost as much as 12½ per cent, and all of them report a much greater fall in efficiency than is indicated by that numerical percentage, for the reason that the depletion of men has been larger than this percentage, and the roads have been compelled to employ such labor as they could get. In most cases it was not as skillful or as efficient as the labor they lost; so the loss in efficiency is not indicated by 12½ per cent, but would be greater than that.

The war board has called attention of the proper officers to these matters and has also suggested that the Government grant possible measures of relief, but so far without result. It should not be forgotten that this increased movement of passengers, troops, mails, parcels post, and freight has been accomplished with forces that were greatly decreased as to numbers and weakened as to efficiency.

There are some commendatory paragraphs in the Secretary of War's annual report for 1917, in which he repeats the appreciation of what the roads have done. You will find them in the letter of Mr. Harrison to the Newlands committee. I, therefore, will not take up your time by reading them.

The Quartermaster General of the Army, in his annual report, also commended the roads highly for the service they rendered. In a report of a special committee on public ownership and operation, as contrasted with private ownership and operation of public utilities, made to the National Association of Railway Commissioners, on pages 14, 15, and 17, is a complimentary article as to the service the railroads have rendered.

The Interstate Commerce Commission, in its annual report of December 1, 1917, after referring to the organization of the Railroad War Board, expresses commendation of what they have done.

Senator WATSON. Can not you state what you have in mind without reference to the papers?

Mr. KRUTTSCHNITT. I will. I wanted to be accurate, but I will state in a general way that the Southern Pacific Co. was called on by the Food Administration to transport 100 carloads of sugar from California to New York early in December. The cars were delivered in New York inside of 20 days after the Food Administration received the order to forward. We did not get the order until several days after they got it. There were two days delay at Galveston in transshipment, but yet the sugar was delivered here within 20 days after they gave the order. The distance is roughly 4,500 miles, and the sugar bureau of the Food Administration expressed its satisfaction and pleasure at the promptness with which the sugar was delivered.

There was recently a shipment of several cars of Army overcoats from New York to Galveston by steamer, transshipped there and sent through Fort Worth to Camp Bowie. The officer in charge of the movement on the receipt of these coats at Camp Bowie wrote an extremely appreciative letter, stating that the overcoats had reached Camp Bowie inside of 22 hours after the ship docked in Galveston. The distance is somewhat over 300 miles, and allowing for time of transfer and carriage of the coats the delivery was made in less than a day, and he expressed a very lively satisfaction of the service the roads had rendered.

Senator WATSON. Mr. Kruttschnitt, before the European war began did the railroads of the country have any trouble in managing the traffic, at any time within your knowledge of the railroad business?

Mr. KRUTTSCHNITT. Yes. I spoke of a congestion—serious congestion—that existed at the Atlantic seaboard in 1915 and 1916.

Senator WATSON. That was after the European war began. I said before the beginning of the European war.

Mr. KRUTTSCHNITT. Yes. At times they did have trouble. The troubles arose from the inability of the carriers to control the removal of the freight after they had performed the service of carriage. Of course what we have done since this cooperative movement started—since the United States entered the war—has been due to the active cooperation and support we have gotten from the shipping public, receiving public, and public bodies. They have been actuated by a splendid sense of patriotism and, as I said before, have done nearly everything we have asked them to do.

Senator WATSON. If, then, you could have the same kind of cooperation amongst the railroads and the shipping public, would your board of managers have any trouble in managing the peace traffic of the United States?

Mr. KRUTTSCHNITT. I think not.

Senator WATSON. Do you believe, Mr. Kruttschnitt, that the railroads will ever go back to the state of management that they had previous to this time?

Mr. KRUTTSCHNITT. We have felt in our discussions that such changes have been made in the carriage of traffic over the roads that we thought that an epoch had been made in the history of railroads, and that even after the close of the war if the roads, restored to private management, should want to do some things that necessity had taught them ought to be done, and that they had done during the war, it was our hope that some of the embarrassments and handicaps that they had to contend with might be removed, when the public and the Government saw what results had been obtained by the efforts the railroads had made.

Senator WATSON. Have you thought out a plan for the future operation of the railroads?

Mr. KRUTTSCHNITT. Nothing beyond what has been discussed in our committee room, and that was generally in the line that we could accomplish a great deal more if perhaps the Government would appoint a representative to sit with us. In other words, permit us to do things that we might do if the law did not prohibit us from doing them.

Senator KELLOGG. What particular things?

Senator WATSON. Yes; what particular things?

Mr. KRUTTSCHNITT. Well, the things we are forbidden to do under the antitrust act, under the antipooling clause of the act to regulate commerce; things in which it seemed to us the public interest could be very easily protected by Government regulation, and the roads be permitted to do things that would increase their own efficiency, their own ability to turn gross into net, and at the same time give better public service. The details we have never worked out. These were simply discussions that we had and hopes that we entertained.

Senator WATSON. Now, you are the chairman of the board of the Southern Pacific Railway, I presume.

Mr. KRUTTSCHNITT. I am.

Senator WATSON. Who is managing the traffic of the Southern Pacific now? Is that being done through the regular organization of the Southern Pacific, subject to occasional orders by Mr. McAdoo, or what is your status, and what is the status of railway management now in the United States?

Mr. KRUTTSCHNITT. That is a very hard question to answer, Senator. I do not know whether I could answer it in any other way.

Senator WATSON. I am just asking for information.

Mr. KRUTTSCHNITT. Up to the present time I really hardly know. I do not think it is any discredit whatever—

Senator WATSON (interrupting). Not at all.

Mr. KRUTTSCHNITT (continuing). On what is being done now, because a stupendous task has been undertaken. I have personally taken the position—if you will indulge me by letting me read a telegram that I sent on the 4th of January to the three presidents of the Southern Pacific Co. to indicate what I considered my position and theirs was, and I do not know that I can answer your question better than by simply reading it.

Senator WATSON. I think the committee would be glad to hear the message.

Mr. KRUTTSCHNITT. It is not very long. It is a message to our three presidents in San Francisco, Houston, and Tucson:

The duties and authority of the Railroad War Board have been terminated, and it was assumed that departmental committees would be automatically dissolved. By proclamation of the President and orders of director general, the facilities of our lines are required, first, for the transportation of troops, war material, and equipment; and, second, for the performance of such other services as the national interests require and of the usual and ordinary business of common carriers. Our officers and employees are expected to continue the operation of the lines in the usual and ordinary course of the business of common carriers and report to the same officers as heretofore.

Physical facilities are to be coordinated and fully utilized as to promote operation as a national system of transportation. Disregard of shippers' routing is authorized only when speed and efficiency of transportation may thus be promoted, and disregard of traffic agreements is required only when they interfere with expeditious movement. Through routes not heretofore open are to be established and used whenever expedition and efficiency will be promoted. Existing schedules of rates and outstanding orders of Interstate Commerce Commission are to be observed until otherwise ordered by director general, and no changes in present methods of accounts as prescribed by Interstate Commerce Commission are required.

Everything in the President's proclamation contemplates the continuance of regular practices, except as they may be changed by order of the director general, and the director general's orders so far issued are specific, and exclusive exceptions to regular practice. There is nothing in the proclamation or order requiring the discontinuance of solicitation or the closing of offices or agencies. Therefore, we are free to decide such questions of policy on behalf of our own lines, irrespective of proposals made by other lines, and should decide them after full consideration among ourselves, with the dual object of facilitating and promoting the maximum capacity and efficiency of the national transportation system and attaining the operating results that are as desirable and essential to the Government during the period of its control as to the owners of the property after the control is relinquished by the Government. It is as important to the Government as to the owners that our organization should not become demoralized, or have its efficiency impaired, that individual initiative should not be disturbed, and that officers and employees should recognize the same responsibility to their officers and directors as heretofore. About this feature, I am writing you to-day.

The letter simply amplified this a bit.

To answer your question as nearly as I can, I consider that all of us in the railroad service are subject to the orders and control of the Director General of Railways; that until he exercises that control or issues some order breaking up some practice that we have heretofore followed we are to continue it; that by not issuing the order the practice is for the time being tacitly approved and should continue. That position I have outlined to our officers, as I found from telegrams I got from them that they were somewhat in doubt as to their status, and after conference with our officers I considered that we were right and so wired them. We can not find anything in the President's proclamation or message or in the director general's orders, as far as issued, that conflicts in the least with these instructions, and until something does, we propose to stand by them.

Senator WATSON. Did you read those instructions or take up this general question with the director general? Did you read those instructions to Mr. McAdoo?

Mr. KRUTTSCHNITT. No; I intend to have a copy placed before him so as to give him an opportunity to approve or disapprove it; but in conferences had by officers of other roads with the director general, by intercourse with his assistants, of whom he has four or five, I am led to believe that our position here is thoroughly sound, and is not in conflict with the director general's own views.

Senator WATSON. That is to say, the Southern Pacific is still under the old management, save in the instances in which the Director General chooses to issue some particular order?

Mr. KRUTTSCHNITT. So I consider it.

Senator WATSON. And that the employees of the Southern Pacific are still employees of the Southern Pacific and are not Federal employees?

Mr. KRUTTSCHNITT. So I would understand it, and that understanding has been confirmed by a pronouncement I saw of Gen. Crowder, to the effect railroad employees are not Government employees. That, I think, appeared in yesterday afternoon's papers, and again in this morning's papers.

Senator WATSON. I think that is all I care to ask you.

The CHAIRMAN. Did you not infer from the President's message in dealing with this subject that you have voiced in that telegram practically what the President said in his message to Congress, that he desired the status of the railroads to remain as near as it is now as the circumstances would justify, deviating only in those particulars where the restrictive laws will not allow the free hand that the Government might have?

Mr. KRUTTSCHNITT. Quite so; and in this telegram that was framed in conference with the principal officers of our company we tried to simply express the thoughts of the President, but in a little different language. In other words, the officers seemed to be somewhat at sea, and we wanted to make it clear that nothing had been issued that conflicted with the President's utterances in his messages to Congress, or in his proclamation, or in any orders issued up to the 4th of January by the Director General, and I might add that this is the 8th of January, and I do not know of any order that has been issued by him that is in the slightest degree in conflict with the instructions issued to our chief executive officers.

The CHAIRMAN. Are you through now, Mr. Kruttschnitt, with what you desire to put before the committee of your organization?

Mr. KRUTTSCHNITT. Yes; I think so.

The CHAIRMAN. Does any member of the committee desire to ask him any questions now, on any of the points of the bill, or otherwise connected with this subject?

Senator CUMMINS. I want to ask him a few questions.

The CHAIRMAN. He says he is through now.

Senator CUMMINS. Referring to the telegram that you have just read, which I am not criticizing, because I feel that it expresses rather clearly the attitude of the Government toward the railroads, as developed so far, why should the Southern Pacific Railroad Co. have any guaranty from the Government? Why should it not be content with a claim for loss that might be imposed upon the company, through or by reason of any order issued by the Director General?

Mr. KRUTTSCHNITT. For the reason, Senator, our experience in collecting claims for loss from the Government has been singularly unfortunate. It is a very difficult matter, unless there is a definite promise, to collect.

Senator CUMMINS. Suppose we promise that we will make good any loss sustained by reason of any order issued by the Director General. Would that satisfy your company?

Mr. KRUTTSCHNITT. That would still throw on us the burden of proving the loss and how it occurred. That would be, in most instances, I suppose, extremely difficult to do. To give you some idea, if you will allow me to explain a little, one possible source of injury or loss to the carriers, if you should pass this bill that is before you, would be the loss of the disorganization of its forces. If the properties of the carriers are managed hereafter by the officers now in charge, if the maintenance of the property is left to them, I do not see now, with the guarantees given in this proposed bill, with some slight modifications to which we have called attention, how there could be any ground for loss incurred from Government orders. But it has been a source of very great anxiety to us to think of what would happen if the method of managing the roads was changed; if the present staff were disorganized and turned out and the property should be turned back to the owners at the end of six months, a year, or two years, with an entirely different corps of men from that which had operated them when they were turned over to the Government. The loss, I consider, would be irreparable; the loss in organization, the loss in efficiency would be greater than any sum of money that the Government could pay us.

Senator CUMMINS. If the present relation of the Government to the railway companies is as you describe, what power has the Director General to discharge any employee of the Southern Pacific Railway Co.?

Mr. KRUTTSCHNITT. Senator, I will have to say I do not know, but if the Director General issued an order discharging an employee of the Southern Pacific Co. I do not know how we could avoid obeying it.

Senator CUMMINS. Then, if you could not avoid obeying it, that is rather conclusive evidence that the relation is not just as you described it; that the Government has really taken possession, I would say.

Mr. KRUTTSCHNITT. This whole question is, to use a trite expression, in the "twilight zone," and I am afraid that it is impossible to draw a straight line indicating where the employee stood before or where they stand now, because it has never been definitely defined.

Senator CUMMINS. Do you not think it is very desirable to have the question removed from the twilight zone?

Mr. KRUTTSCHNITT. I do.

Senator CUMMINS. And put in a light so clear that everybody can understand it?

Mr. KRUTTSCHNITT. Unquestionably; no discussion possible.

Senator CUMMINS. You do not think, do you, that either the President's proclamation or the bill that is now before the committee takes the question out of the twilight zone?

Mr. KRUTTSCHNITT. No; the President's proclamation or the clause of it referring to what we are discussing:

Until and except so far as said directors shall, from time to time, by general or special orders otherwise provide, the boards of directors, receivers, officers, and employees of the various transportation systems shall continue the operation thereof, under the usual and ordinary course of the business of common carriers in the names of their respective companies.

Now, that is quite clear, except the provision, "until and except so far as the directors shall, from time to time, by general orders decide." Now, he might to-morrow decide to brush aside the boards of directors, receivers, officers, and employees.

Senator CUMMINS. Then the Government would be in possession and operation of the property?

Mr. KRUTTSCHNITT. I should say that it would be in absolute possession.

Senator CUMMINS. Do you understand that the Director General has, under the present proclamation and appointment, authority to fix the wages of the men who are employed by the Southern Pacific Road?

Mr. KRUTTSCHNITT. If it is an order, I do not see how we can escape that conclusion.

Senator CUMMINS. Well, do you believe that such an order would be in harmony with the arrangement that has been established up to this time?

Mr. KRUTTSCHNITT. No; I do not; but I must say at the same time that the time has been so short since the arrangement has been established that it is rather hard to draw any inferences as to what the future has in store.

Senator CUMMINS. Would you regard an order fixing the wages of the employees of your company as one of the disturbances that would inflict a loss upon the company, and that ought to be provided for in a scheme of compensation?

Mr. KRUTTSCHNITT. It should be, because if the director general can fix the men's compensation our experience has shown that the rates of pay of employees on railroads never go down, and the properties are handed back at the end of a year or two years with the wages of large numbers of employees raised considerably, so that the roads, when they are released, no longer having this guaranty, assuming that a guaranty will be given, would be in desperate straits.

Senator CUMMINS. Suppose the director general should advance the rates which have hitherto prevailed—rates for transportation which have hitherto prevailed in your company—would that order be such a one as you think you ought to have compensation for?

Mr. KRUTTSCHNITT. You mean that if contemporaneously they raised the wages?

Senator CUMMINS. No; any time; contemporaneous or without raising the wages. He does not have to exercise the power, if he has it, of increasing wages contemporaneously with the power of increasing rates?

Mr. KRUTTSCHNITT. May I ask you, then, to repeat the question. I did not get it.

Senator CUMMINS. I will restate it. Suppose the director general should advance or increase the rates for transportation over your road, would that be such an order as you think you ought to have compensation for?

Mr. KRUTTSCHNITT. Well, if he increased the rates, we would not complain.

Senator CUMMINS. Now, anything that would increase your expenses you would think would be violative of your rights, but anything that would increase your revenue would not be?

Mr. KRUTTSCHNITT. Well, if you say anything that would increase our net income would not be violative of our rights, I should say, of course, we would not complain about it.

Senator CUMMINS. And that without regard to what income you have at the present time?

Mr. KRUTTSCHNITT. Of course, during the time the Government has the property it does not make a particle of difference to us what the income is, except as to its influence on the operations of the road after we get it back; but the rates are fixed during the Government's control; whether our company makes the income that it has been making or not. The Government guarantees a certain income, and it can do anything it likes with either expenses or rates, and the only claim for loss that we would have would be the effects on the organization and operations of the property after it came back. They might pay any wages they chose during their control, and if a guaranty is given, it does not affect our net income.

Senator CUMMINS. It would not affect the guaranteed net income, but it would affect the actual net income?

Mr. KRUTTSCHNITT. The actual net income; but everything above the net railway operating income—which we will say now, for the purpose of argument, has been guaranteed by the Government—inures to the benefit of the Government. The excess is turned over to them.

Senator CUMMINS. Of course, I am not trying to find out now whether that is a proper standard or not, but only to get a clear notion of what the actual relation is or may be. The Government, according to your view, has put the matter up to this time in a position, if this bill is passed, where you people have no other motive than patriotism to keep the expenses within the proper limits.

Mr. KRUTTSCHNITT. We have a motive beyond patriotism to keep the expenses down, because if we do not, if we ever lose our grip on expenses on our road it will be years of the hardest kind of work to

get control of them again, and perhaps we may never get them under control again. I have seen times when the officers of the road to some extent lost their grip on expenses, and they seemed to be getting beyond their control, and there is no work that is ever done by the executive officers greater than to regain control of expenses once they get beyond them.

Senator CUMMINS. But you, as I understand you, feel that your company is absolutely powerless to control that situation? You just said you thought the director general might reduce or increase the wages or compensation of employees. The Government can put the price on everything that may be bought by the railway company for its maintenance and operation, so what power have you over the matter?

Mr. KRUTTSCHNITT. The power of seeing that the materials bought, no matter what the price, are used efficiently and economically, and that we do now, that we propose to continue to do unless somebody stops us. I do not think anybody will stop us, because that is obviously to the advantage of the Government. I consider it is very much to the advantage of the Southern Pacific Co. to continue doing that—to hold our organization intact and to maintain the proper discipline and control over operations. As you say, the power to do that may be taken out of our hands by some future order. If it is, we have simply to submit like good soldiers to proper authority.

Senator CUMMINS. You still have a motive to keep expenses down as low as possible and keep the rates as high as possible or reasonable?

Mr. KRUTTSCHNITT. Yes. One powerful motive is this: The motive of an officer's conscience and self-approval. If the Southern Pacific owners have not a penny's interest in the income of their property under this guaranty, I certainly would not want, for the sake of what little reputation I may have, or the officers under me may have, to have the results under my stewardship for the Government turn out worse than they did for the private owners, because I would be open to the execration of my fellow citizens and to the charge of not caring whether the expenses went up or down, simply because the Government was running the property.

Senator CUMMINS. Well, the entire salary list, as well as wage list of your company, is now charged up against the operation and maintenance of the property?

Mr. KRUTTSCHNITT. Yes.

Senator CUMMINS. I wish to call your attention now to a statement that you made yesterday, and which I was not prepared to examine you upon, because I had not before me the table that I have now. I wish you would examine this set of tables and state whether you recognize it as one of the exhibits that was introduced before the Interstate Commerce Commission in a proceeding pending before that body.

Mr. KRUTTSCHNITT. No; I do not recognize it. I have never seen it.

Senator CUMMINS. It was prepared, apparently, by the Bureau of Railway Economics. What is that bureau?

Mr. KRUTTSCHNITT. The Bureau of Railway Economics is a bureau established here in Washington by the railways of the United States, to study economic questions for the benefit of all its subscribers, and to prepare statistics bearing on operations. That paper

was prepared, as the title indicates, for 38 railway systems operating in official classification territory, November 5, 1917. I have never seen and know nothing about it.

Senator CUMMINS. I will say that it is one of the exhibits prepared by and introduced by the railways, in a proceeding which was pending before the Interstate Commerce Commission.

Mr. KRUTTSCHNITT. The title shows that, Senator; but it is a particular group of railroads that I have no connection with, and with whose operations I am not familiar.

Senator CUMMINS. But yesterday, in speaking of the years 1916 and 1917, you remarked that those years had been rather hard upon the eastern railroads.

Mr. KRUTTSCHNITT. That is my general impression.

Senator CUMMINS. And it is because of that remark that I want to call your attention to certain things in these tables. This table comprises, as you remarked a moment ago, 38 different railway systems in official classification territory, and that is practically identical with the eastern district of which you spoke, is it not?

Mr. KRUTTSCHNITT. I should say roughly and inaccurately so. I do not remember the geographical boundaries of what is known as official classification territory. The 38 roads that I understand were making this application were—I will say again my impressions are not accurate, but my idea is it applies to the roads east of the Mississippi River and north of the Ohio and Potomac.

Senator CUMMINS. Well, in order that your answer may be fully understood to any question that I may put, I will take the liberty of reading the roads comprised in this table. They are:

Ann Arbor; Baltimore & Ohio; Bessemer & Lake Erie; Boston & Maine; Buffalo & Susquehanna; Buffalo, Rochester & Pittsburgh; Central of New England; Central of New Jersey; Chesapeake & Ohio; Chicago, Indianapolis & Louisville; Chicago, Terre Haute & Southeastern; Cincinnati, Hamilton & Dayton; Cincinnati, Indianapolis & Western; Coal & Coke; Dayton & Union; Delaware & Hudson; Delaware, Lackawanna & Western; Detroit & Mackinac; Detroit, Toledo & Ironton; Erie; Hocking Valley; Kanawha & Michigan; Lehigh & Hudson River; Lehigh & New England; Lehigh Valley; Maine Central; New York Central; New York, Chicago & St. Louis; New York, New Haven & Hartford; New York, Ontario & Western; Norfolk & Western; Pennsylvania System, East and West; Pere Marquette; Pittsburgh & West Virginia; Reading; Rutland; Toledo, St. Louis & Western; Wabash; Western Maryland; West Side Belt; Wheeling & Lake Erie.

It might be inferred from the remarks which you made yesterday that in the eastern district, for the year 1917, it cost the roads operating in that district \$1.25 to earn \$1. I do not mean that you said it cost you that. I would be glad to have you affirm it, or, if you did not mean that, I would be glad to have you say so.

Mr. KRUTTSCHNITT. I think I stated it cost from \$1.10 to \$1.20 to earn a dollar, and my statement was based on the information that I get monthly from the newspapers of returns made by the important eastern systems. Every railroad manager naturally takes an interest in what the other roads are doing. Now, I have seen, month after month, the New York Central, the Philadelphia & Reading, Baltimore & Ohio, and other important eastern systems reporting very large increases in gross revenues, and at the same time large decreases in net, and on that I based the impression that I gave voice to yesterday, that it was costing them more than a dollar to earn a

dollar. Just how much more I can not say. I did use the expression, I think, \$1.20. That may be inaccurate, but I do say it costs them more than a dollar. Therefore, the more business they are doing the worse off they are.

Senator CUMMINS. In these systems that I have just mentioned, and according to the tables the railways themselves prepared and introduced, the net operating income—the definition which they arrived at yesterday—for the year ending June 30, 1915, was \$406,461,565, and the net income was \$458,254,352; so that if these railroads in the eastern district earned about all of their cost of operation and maintenance and taxes in the sums of money I have mentioned here how can it be that it cost them more than a dollar to earn a dollar?

Mr. KRUTTSCHNITT. Are those figures for two years?

Senator CUMMINS. The figures that I gave you were for the year 1917.

Mr. KRUTTSCHNITT. Well, I should like to see the figures for 1916. In other words, my impression has been formed from seeing in the papers month after month that the large systems are constantly reporting losses of net money, or net revenues, with large increases in gross revenues. Now, if that is the case there is only one inference to be drawn from it, that it costs them more than a dollar to earn a dollar.

Senator CUMMINS. You meant, then, that because their net income for 1917 was less than their net income for 1916 that it cost more to earn a dollar than a dollar?

Mr. KRUTTSCHNITT. Certainly; I could not reach that conclusion any other way. If you earned in one year, we will say, \$100 net on a certain investment, by doing a thousand dollars' worth of business gross, and the next year you do \$3,000 worth of business and you earn net \$90, I should say that all of your increased gross business had been absorbed in expenses, and some more.

Senator CUMMINS. That was just the point that I wanted to make clear. What you meant was that they did the increased business at a loss?

Senator KELLOGG. That is what I understood him to say.

Senator CUMMINS. That is not what he said.

Mr. KRUTTSCHNITT. That is what I meant to convey. I think now you have it perfectly clear. It is only by comparing the two years that I could reach the conclusion that between 1916 and 1917, if the roads earned \$100,000,000 more gross and \$10,000,000 less net, of course they absorbed all of the \$100,000,000 of gross revenue in expenses and \$10,000,000 besides.

Senator CUMMINS. But you are assuming a static condition of the year before. You did not mean that these roads in 1916 were being operated at a loss?

Mr. KRUTTSCHNITT. No; I do not think I said that, Senator. I certainly did not mean it.

Senator CUMMINS. It may be that I am wrong, but that is the impression that I think was generally formed.

Mr. KRUTTSCHNITT. I am sorry if I have made that impression. I hope that what I have said has removed it now. I certainly did not mean to say that.

Senator CUMMINS. Now, I want to call your attention to another phase of the matter, which relates to your claim that 1916 and 1917 were not exceptional years. Now, I find that in this table, which I shall introduce in the record, that in 1917, the fiscal year, the percentage of net operating income to investments, as shown upon the books of the companies, was 5.71; that is, the net operating income was 5.71 per cent of the investment account of these roads. For the year 1916 it was 6.52 and for the year 1915 4.35. The average, even upon the investment account for those three years, is as high as the average of any three years, taken consecutively, in the history of the companies?

Mr. KRUTTSCHNITT. You have me at a disadvantage, Senator. I am totally unfamiliar with the statement that you have before you. I have never seen it before, and officers will appear for the eastern roads who are entirely familiar with it and who can, no doubt, explain it. I have not made any particular study of the figures that are given.

Senator CUMMINS. I rather assumed that you were familiar with this exhibit.

Mr. KRUTTSCHNITT. No; I am not. I never saw it until you showed it to me.

Senator CUMMINS. I will content myself at this moment by stating, as shown by the paper, simply for the purpose of making it clear when we want to examine the record—

Mr. THOM (interrupting). Senator Cummins, I will say for your information that our next witness will be Mr. Shriver, the vice president of the Baltimore & Ohio. He is familiar with that statement you have in your hand.

Senator CUMMINS. I will be very brief. The net income upon total capital obligations for the year 1917 on the eastern roads—and they are the ones that are particularly unfortunate, I am told—was 6.18 per cent. For 1916 it was 6.89 per cent. Now, that is two years, each of them higher than any other years since 1900, at least, and probably in the history of the companies. The percentage of net income upon capital stock outstanding—that is, after payment of interest on the debt—for 1917 was 9.04 per cent; for 1916 it was 10.5 per cent, and those two years each of them higher than a similar net income for any year since 1900 and in the history of the company. In connection with this I should like, Mr. Chairman, to offer this table found on page 12 of the exhibit as part of the record.¹

Senator KELLOGG. Senator, does that include all of the railroads in the United States?

Senator CUMMINS. No; I specifically named the railroads. It comprises the 38 systems in official-classification territory, and it includes all of the eastern railroads.

Senator LEWIS. That was a set of railroads that was involved in the question of the investigation of the increased rates?

Senator CUMMINS. The 15 per cent increase.

The CHAIRMAN. Have you finished with Mr. Kruttschnitt?

Senator CUMMINS. I have.

The CHAIRMAN. Does any other member of the committee desire to ask any questions?

¹ Table not printed.

Senator KELLOGG. Just a question or two.

The CHAIRMAN. All right, Senator Kellogg.

Senator KELLOGG. Mr. Kruttschnitt, do you think there is any doubt that the director general has the power under this law and proclamations to fix the wages of the men?

Mr. KRUTTSCHNITT. I can only infer, Senator, from the few brief instructions the director general has sent out and from a study of the President's proclamation I have made, our views as to what our employees should do. Those views were written after a careful scrutiny of the proclamation, the message, and such orders as the director general did issue. The telegram was written after a study made by me and my associates in New York, and it was sent out because it was very evident from telegrams we were getting from the line of the road that the executive officers away from New York were somewhat in doubt as to what they should do. They were doing things that struck us as being entirely too drastic, and they contemplated doing things that would seriously inconvenience the public. We saw no reason why these things should be done, and we could not see any ground for doing them in any of the orders of the director general or the utterances of the President. I do not know what the director thinks about his right to regulate wages. I did answer, in reply to a question, that if he desired to regulate wages, I supposed he would do it. I should say offhand that it seems to me that according to the laws under which the President acted he has pretty much supreme authority, and that authority was passed on to the director general, and if an order was issued I should certainly obey it.

Senator KELLOGG. Now, I suppose, in railroad managements generally, as far as possible, the railroad operatives engage the men to work with a view of promotions in the service from lower positions to higher positions on the road; is that not so?

Mr. KRUTTSCHNITT. It is so; and I think on all well-managed roads you will find very great opposition from the chief executives to approve filling any position with a man engaged from the outside.

Senator KELLOGG. The men are encouraged with the idea that from the lowest position to the highest—

Mr. KRUTTSCHNITT (interrupting). They belong to them.

Senator KELLOGG. Those positions belong to the men on the road.

Mr. KRUTTSCHNITT. And they may aspire to any position within the gift of the company.

Senator KELLOGG. Is not that one of the most valuable things in the railroad operation in the country, or in any business?

Mr. KRUTTSCHNITT. I have already said in the most emphatic language that I could command that I thought the destruction of that feeling, or the destruction of the railroad organization and discipline, would do the roads incalculable harm. No amount of money could compensate them for it.

So far as our properties are concerned, I would rather see the track go to the mischief and the equipment run down than to have the esprit de corps that exists to-day destroyed. One we could replace with money; the other we could not.

Senator KELLOGG. Now, without in the slightest degree disparaging any department of the Government, is it possible to have any such service in Government departments? Do they have them generally?

Mr. KRUTTSCHNITT. The general impression is that they have not; that the employees do not feel as secure in their positions in the Government service as they do in the railroad service under private management. That is only an impression I have. I want to be quite fair. I do not know, but that is my impression.

Senator KELLOGG. Now, I gathered from your testimony, what you thought that the railroads needed to increase the efficiency of their operation was authority practically to operate as a unit; to route traffic over lines least congested or over the shortest lines; to take their passenger trains off routes where they were not needed or where there was an over amount of equipment, so that the roads might be practically operated as one great system. That is what you thought?

Mr. KRUTTSCHNITT. That was our aim when we formed our committee.

Senator KELLOGG. And you were doing it practically in spite of the law, were you not?

Mr. KRUTTSCHNITT. To the best of our ability.

Senator KELLOGG. Is it your opinion that if Congress could give the authority for the roads to do that under Government supervision, so that that powder could not be used, that would have solved the whole railroad question?

Mr. KRUTTSCHNITT. It is.

The CHAIRMAN. Mr. Kruttschnitt, may I ask you a question right in that connection? Do you think that the private individuals or the different corporations could have as efficiently mobilized and utilized all of the forces of the railroads, in view of their special interests, which they could not divorce—could do it as efficiently as the Government?

Mr. KRUTTSCHNITT. Senator Kellogg's hypothetical question assumed those motives. Perhaps I inferred too much, but the impression produced on me was that your question asked whether I thought that if all the power of the Government to ignore antitrust laws and antipooling laws had been accorded to the carriers by Congress under proper regulation, they could have operated the roads satisfactorily and efficiently. I said I did. Now, you ask whether competitive considerations would not prevent the carriers from working together thoroughly. If they were accorded the permission to pool, and all the traffic was handled regardless of earnings and the earnings apportioned afterwards, the competitive feature would largely disappear.

Senator GORE. And that is the thing that has got to be done, no matter who does it, in order to meet the situation, is it not?

Mr. KRUTTSCHNITT. I think so. Of course, it is a pretty hard thing, Senator, when you have had drummed into you for years and years the commandment "Thou shalt compete," to suddenly change and obey the order "Thou shalt not compete"—it would take some little time to make the change.

Senator GORE. Do you think you can make people compete by law that do not want to compete?

Mr. KRUTTSCHNITT. I was going to say that almost ever since I can remember—I can remember a long time back; I have forgotten how long—I can safely say that has been the command to the roads, that they should compete, and they have competed. They have not

been able to compete in rates, but they have competed strongly in service.

Senator GORE. Is not that the one trouble that would issue from pooling, a lack of competition in service, and maybe to demoralize the service?

Mr. KRUTTSCHNITT. Not under Senator Kellogg's hypothesis. That is, the operation of the roads would be closely supervised and regulated by proper authority. To-day the power rests in State commissions. If they consider the service between certain points not sufficient they issue an order at once to make it so. They have the authority to do it and under the conditions presupposed by Senator Kellogg that power would still rest in State commissions, and I suppose in the Interstate Commerce Commission as to interstate trains and facilities.

Senator GORE. In view of the fact that the railroad transportation is essentially naturally a monopoly, would it be desirable to have all of the railroads of the country coordinated into one system? I mean under private management and Government supervision? Is not that a desirable end to obtain?

Mr. KRUTTSCHNITT. I think so. As I said, I thought the work we had done during eight months had rather made it probable that such a solution of the railroad problem might be worked out.

Senator KELLOGG. Is that all, Senator?

Senator GORE. Go ahead.

Senator KELLOGG. My question did assume that there would be sufficient Government supervision to insure reasonable rates, insure against the abuse of the pooling privilege and the unification of the system, to see that every community had reasonable transportation facilities, and generally to oversee the railroads in the line of the supervision which in the last has existed, but to a greater extent leaving the railroads to be operated by private enterprise, owned by private capital, with all the opportunity and enterprise that private capital must still maintain; in your opinion, is that better than Government operation and ownership of railroads?

Mr. KRUTTSCHNITT. Yes; I certainly think so.

Senator LEWIS. You comprehend in your reply, though, that private ownership will serve public welfare in the discharge of the obligations and duties of a railroad?

Mr. KRUTTSCHNITT. I do, and private ownership has done that, in the opinion of students of railway operations, to a greater extent than public ownership in other parts of the world ever has done. I remember a certain opinion, expressed by Secretary Lane, who was then on the Interstate Commerce Commission and who attended the international railway congress in Berne, Switzerland—I think the last one that was held—that American roads were the best managed and gave the best service to the public of any railroads in the world. I remember the opinion expressed by Ackworth, who is a student of railway operations, of very wide reputation—an English lawyer—that he considered the American roads were giving the best service and the cheapest service of any railroads in the world.

Senator LEWIS. Your reply to Senator Kellogg laid a foundation. You would not assume, sir, that the public of the United States would regard the conduct that has transpired in the Rock Island

Railroad, the St. Louis & San Francisco, the New York, New Haven & Hartford, and similar enterprises, of public looting that transpired in those managements would be to the public welfare, and that that is a better display in the management than shown in the European roads, where they have been owned by the Government?

Mr. KRUTTSCHNITT. No; I should not, Senator. Nobody can condemn looting railroads more earnestly than I would.

Senator LEWIS. I certify to that myself, sir, that you would as quickly as anyone, sir.

Mr. KRUTTSCHNITT. Thank you. On the other hand, the public of the United States is accustomed to consider the national banks as very well managed institutions, closely under the control of the Government. They have been regulated longer and more closely perhaps than any other public institutions have been regulated. I think from what I know of it, that the regulation of national banks is altogether admirable, yet it is a fact, as shown by the reports of the Comptroller of the Currency, that there was a larger percentage of looting of national banks in the last four years than there was of railroads; yet the public does not consider national banks corrupt, does not consider them thoroughly inefficiently run; just the opposite.

Senator LEWIS. You recognize the distinction, do you not?

Mr. KRUTTSCHNITT. I do not consider the looting of a few railroads; I am using your language, as I am not over familiar with the circumstances to which you refer on these roads, by name, but assuming that the language is properly applied, I do not see that the public would be any more justified in one case than in the other. They have the highest opinion now of the honesty and efficient operation of national banks, and I do not see why they should not have the same opinion of regulated railroads. From what I know of the public I do not believe that the opinion is at all prevalent that the railroads are dishonestly managed and are more subject to looting than other publicly regulated institutions.

Senator KELLOGG. Mr. Kruttschnitt, I was coming to that subject. Do you not believe that there should be, under such conditions as I have described in my hypothetical question, reasonable supervision of the issuance of railway securities by one body—say the Interstate Commerce Commission or such a body? Not hamper the issuance of railway securities, so that a line not the richest would be prevented from getting money, but to prevent that what you call wild-cat exploitation of the railroads that has existed in the past.

Mr. KRUTTSCHNITT. I will answer that unhesitatingly, yes; and in this very room a large part of the time of this committee, sitting jointly with the House committee, was taken up listening to arguments of the railroad managements earlier in the year—I think it was in March—who advocated exactly what you outline.

Senator KELLOGG. That would make the securities a safer and better investment for the public, and would not injure the railroads; is not that true?

Mr. KRUTTSCHNITT. Unquestionably it would.

Senator KELLOGG. Now, the human equation, I suppose, is exceedingly valuable in a railroad, as it is in any other business—the ability and enterprise of the men; is that true?

Mr. KRUTTSCHNITT. It certainly does not permit of argument.

Senator KELLOGG. During the last six months, since the war commenced, I understand you to say you have lost a great many of your best employees—all the railroads have?

Mr. KRUTTSCHNITT. Yes; we have.

Senator KELLOGG. What I wish to inquire is, if some of the roads have lost many of their operating men and men holding higher offices than the mere trainmen?

Mr. KRUTTSCHNITT. Yes; they have lost them in very large numbers. I did not mean my statement this morning to apply to mere shop men, but when I said skilled labor, that would ordinarily be understood to apply to mechanics and shop men; I should have said skilled officers and employees. They have lost them in very large numbers. The high officers of a great many railroads are in the service now abroad.

Senator KELLOGG. That is all I care to ask.

Senator POMERENE. Mr. Kruttschnitt, we already had in the record a statement as to the net earnings of the railways of the country for the years 1914, 1915, 1916, and 1917, and perhaps for previous years, and these figures indicate the net earnings during the last year or two have been substantially in advance of what they were during the years 1914 and 1915. Are you able to state to what extent the cost of railway equipment, railway supplies and wages have advanced during these years? I ask this for the purpose of shedding some light upon the subject when we come to consider what these net earnings may be.

Mr. KRUTTSCHNITT. I think I have something bearing on that that was prepared for the joint committee in March, showing the specific prices.

Mr. THOM. Will you indicate the date on which that is made up, in your answer?

Mr. KRUTTSCHNITT. Yes, sir. Here is a diagram which I will hand to the stenographer, showing the rise in the prices of commodities from 1907 to 1917, taking the prices in 1907 as 100, our basic figure, to 1917.

Mr. THOM. What date in 1917?

Mr. KRUTTSCHNITT. Up to the latest statistics. The rates were taken from Bradstreet. Bradstreet publishes a paper weekly, giving what is called the index number, which is a number representing the effects of prices upon a great many different commodities combined.

Mr. THOM. Would that be the calendar year 1907 or the fiscal year, do you know? You see, the panic came in October.

Mr. KRUTTSCHNITT. They were taken from the United States Department of Labor statistics, and while it does not say so, I am quite confident that it was for the calendar year. This is a statement I had prepared just before I came here to show the influence of prices on the cost of railroad living and the living of other people. The cost of some 346 commodities has risen about 63 per cent since 1907, and conversely the purchasing power of a dollar—the exchange value of a dollar as against commodities—has fallen from 100 to about 60 per cent. In other words, it has fallen 40 per cent. A dollar has a purchasing power of only 60 cents in place of 100, which it had formerly.

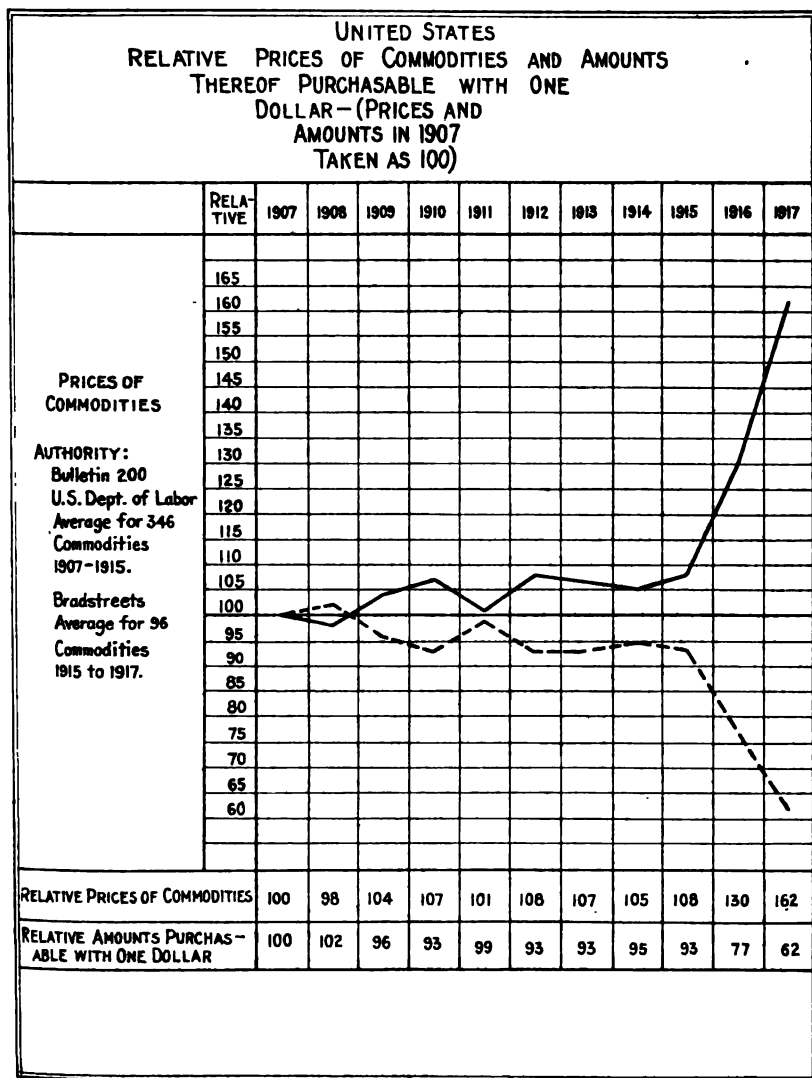
Senator POMERENE. You were speaking of commodities. Did you include in those commodities what would be ordinarily understood as railroad supplies and equipment?

Mr. KRUTTSCHNITT. This statement covers some 346 commodities, which are of all kinds. I am going to present another one, showing some railroad commodities.

Senator ROBINSON. Does the statement show what commodities?

Mr. KRUTTSCHNITT. No; because the United States Department of Labor statistics do not indicate that, but you can see that 346 would include almost everything imaginable—clothing, supplies, groceries, lumber, hardware.

(The chart referred to is here printed in full, as follows:)



Now, this other chart which I will present—this black and white one—was prepared with the latest available figures in March, 1917, and it shows the rises in the prices of bridge timbers, ties, etc., for 1897, 1908, and 1917. Those are periods of 10 years. In 1897 the bridge timbers are marked 100, they cost 157 per cent in 1908 and 175 in 1917. Ties jumped from 100 in 1897 to 175 in 1908 and to 225 in 1917. Steel rails jumped from 100 in 1897 to 149 in 1908 and 213 in 1917. Bar iron from 100 in 1897 to 139 in 1908 and 301 in 1917. Car journal bearings jumped from 100 in 1897 to 124 in 1908 and to 261 in 1917, and in the same periods the freight rates fell from 100 in 1897 to 97 in 1908 and to 87 in 1916. In other words, 13 per cent.

The cost of equipment is not in this statement, but I will give that from my memory, which is fairly accurate, because we made some purchases not very long ago. One of the heaviest class of freight engines that we buy, cost before the war from \$28,000 to \$32,000.

Senator POMERENE. Before August 1, 1914, you mean?

Mr. KRUTTSCHNITT. Yes; before August 1, 1914. We bought some 18 months ago for which we paid \$46,000, and we have some now under contract, a cost plus percentage contract, and the estimate made by the builders is that the cost of those locomotives will be over \$85,000. That cost, however, was estimated before the price of steel was fixed by the Government, and we took the chance that the price would be fixed. I do not mean to say that the locomotives will cost that. I am in hopes that they will cost much less on account of the price fixing of steel, but I do not think they will come below \$60,000 or \$65,000.

The CHAIRMAN. These are engines of the same type?

Mr. KRUTTSCHNITT. The same general type.

Senator GORE. The same pulling capacity?

Mr. KRUTTSCHNITT. Yes. I have here some figures on freight cars within the last two months. The freight cars that cost before August, 1914, ten and eleven hundred dollars, were offered by the builders—this was since the price of steel had been fixed—at \$2,350. Oil-tank cars that we paid from \$1,200 to \$1,400 for before the opening of the European war, were quoted at from \$3,300 to \$3,600 apiece. That gives you some idea of the rise, which is over 100 per cent in each case.

(The chart above referred to is here copied in full and appears on page 291.)

Senator GORE. About what is the average life of one of those freight cars or tank cars?

Mr. KRUTTSCHNITT. I think we estimate for the all-steel car that its life will be about 30 years—of course with proper care—proper care as to maintenance.

Senator POMERENE. Have you finished with that answer?

Mr. KRUTTSCHNITT. Yes. I will just ask permission to hand the stenographer a platted diagram supporting what I said this morning about the increased service gotten out of locomotives and freight cars by the War Board.

(The diagram referred to is here copied in full and appears on page 292.)

Senator POMERENE. What increase has there been since March?

Mr. KRUTTSCHNITT. I can not give you that in figures, but the prices increased suddenly on freight cars and locomotives, up to the time the Government fixed the price of steel, and then they went down at once. Just what the amount is I can not tell you.

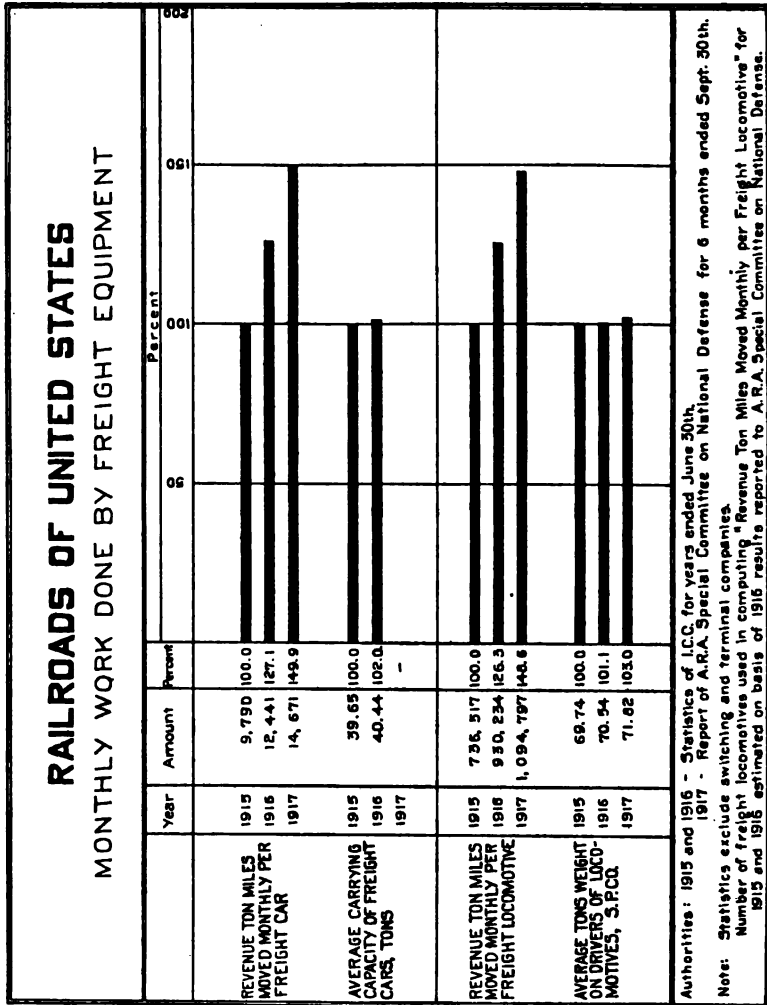
Senator POMERENE. Now, during this 10 years, what advances have there been in wages?

SOUTHERN PACIFIC COMPANY				
COMPARATIVE PRICES PAID FOR MATERIALS				
USED IN OPERATIONS IN 1897, 1908 AND 1917				
Material	Year	Amount	Percent	
BRIDGE TIMBERS AND STRINGERS	1897	\$ 7.00	100	
	1908	11.00	157	
	1917	12.25	175	
TIES	1897	40¢	100	
	1908	70¢	175	
	1917	90¢	225	
STEEL RAIL	1897	\$18.75 per lb.	100	
	1908	28.00 " "	149	
	1917	40.00 " "	213	
BAR IRON	1897	1.08¢ per lb.	100	
	1908	1.50¢ " "	139	
	1917	3.25¢ " "	301	
CAR BRASSES	1897	11.00¢ per lb.	100	
	1908	13.60¢ " "	124	
	1917	28.75¢ " "	261	
FREIGHT RATE Per TON MILE	1897	1.126¢	100	
	1908	1.087¢	97	
	1916	.977¢	87	

Mr. KRUTTSCHNITT. Well, there is a very large advance that became effective on the 1st of January, due to what is known as the Adamson eight-hour law. That was a very large advance, and there have been a great many advances made to employees in other departments, as the railroads knew must be made at the time the Adamson law was passed. We called the attention of the Government officers

to the fact that if the increase was accorded to one class of employees the others would all want it, and all roads have made very general increases in the wages of employees in nearly all departments, both organized and unorganized.

Senator GORE. That is, there is a sort of relation that has to be maintained, is there?



Mr. KRUTTSCHNITT. Yes; you can not make extremely large increases to one class of men, based on the cost of living, and deny it to others.

Senator POMERENE. Now, I would like to ask you another question or two relating to another subject. You have discussed the plan or method of compensation which is presented by section 1 of the pending bill and as contained in the President's message. I have heard proposed another method of compensation, and I want to direct your

attention to it, if I may. It has been suggested that it would perhaps be better to take the market quotations or valuations of railway stocks and base the compensation—that is, take those valuations for a period of several years and base the compensation upon the valuations. I would like to ask your views as to the merits or demerits of that plan.

Mr. KRUTTSCHNITT. Yes; I have heard some such suggestion made. As I understand it, the plan is to base the compensation, or to allow the roads compensation sufficient to pay the interest on the funded debt; is that it—and a dividend based on the market price of stock?

Senator POMERENE. Well, I did not go into the details of the plan. That, in substance, states it as I understand it.

Mr. KRUTTSCHNITT. That is the way I understood it.

Senator POMERENE. It is proposed to have a compensation based on what would be the average valuation of these stocks, covering a period of years.

Mr. KRUTTSCHNITT. I have heard that suggestion made, I have given the matter some little thought, and I have some notes on it.

Senator CUMMINS. Mr. Chairman, I assume you refer to the suggestion I made before?

Senator POMERENE. That is what I had in mind.

Senator CUMMINS. I think it ought to be stated a little more fully, if not more accurately.

Senator POMERENE. I would be very glad to have you do it.

Senator CUMMINS. I did not intend to bring it to the attention of this witness. Base the compensation for the use of the property on, first, the annual interest at the present time, upon the present unfunded debts of the various railway companies, plus a reasonable rate of interest upon the market value of the stock; whether the company should divide the reasonable rate of interest upon the stock in dividends or whether it should hold the amount in the treasury would not be material to the Government.

Mr. KRUTTSCHNITT. No; except I always thought a reasonable interest on the value of the stock—I suppose you mean a dividend belongs to the stockholders, whether they spend it or leave it in the treasury.

Senator CUMMINS. It is something the company can do whatever it likes with. In other words, I did not contemplate compelling the railway companies to divide their compensation among the shareholders in dividends if they did not desire to do it. We are dealing with the railway companies which own the property.

Mr. KRUTTSCHNITT. Well, it seems to us that if you impress or commandeer—which is what the Government has done—the use of these properties from the owners that you should pay a fair return on the value of the properties and not on market prices of stock, which are notoriously fickle, follow no law whatever, and are subject to violent fluctuations, sometimes for a reason that can be assigned, and more frequently for reasons that no man can assign.

The best test of the value of the use of the property which the Government takes is, of course, the return or income which the owners have been getting from it before the date of impressment, and my views yesterday were directed to that feature of compensation. Now, if you take the commission's estimates or statements to this

committee of the market value of stocks, over a certain period which they worked up, I think, at your request—

Senator CUMMINS. In that respect I hope Mr. Kruttschnitt will take into account the fact that the total furnished by the commission is of comparatively little value, because for the three years that it names it simply takes the high point and the low point for the year and makes an average of the two. A fairer average of the market value of stock would require an enlarged basis.

Mr. KRUTTSCHNITT. Quite right. I did not know how it was arrived at. I simply got it off these statements. If they are not reliable I do not think it is worth while to waste any of the committee's time in argument on it, except to say if they had been reliably gathered, and if they had multiplied the total bonds and stock issued by these prices, you would have gotten for the years in question—which I think were 1912, 1916, and 1917—values which were highest in 1912, lower in 1916, and still lower in 1917. In the interval values of the property have increased largely from 1912 to 1917. In other words, making the multiplications you will find that the valuation of the properties derived from the multiplication of the average cost of stocks and bonds by their amounts would represent \$1,600,000,000 less in the latter period than the former; yet in the interim \$2,000,000,000 more money has been put into the property, so it shows how misleading such a plan of deducing value would be.

Senator GORE. That in the aggregate they were less?

Mr. KRUTTSCHNITT. The value determined by the multiplication of these market prices by quantities shows a diminution in value from 1912 to 1917 of \$1,600,000,000, and in the interim \$2,000,000,000 had been put into the properties.

Senator GORE. And included in that shrinkage?

Mr. KRUTTSCHNITT. Yes.

Senator POMERENE. Making a total difference of \$3,600,000,000?

Mr. KRUTTSCHNITT. Yes, sir; now, to take some concrete examples, I will cite Southern Pacific stock, as it is our own stock, and I am more familiar with it than any other. Southern Pacific stock sold about 10 years ago at its maximum, which was \$128 or \$130. It sold a couple of weeks ago at \$75, a fall of 55 points—\$55 a share.

In the same period the Southern Pacific Co. put \$400,000,000 of new money—actual cash—into its property.

Senator POMERENE. In what period?

Mr. KRUTTSCHNITT. In about 10 years, and increased its property values by about 50 per cent.

Senator POMERENE. What do you mean by that?

Mr. KRUTTSCHNITT. I mean that using approximate figures of 10 years ago the property values of the Southern Pacific properties were \$800,000,000 and to-day about \$1,200,000,000. Now, the actual cash put in the property increased about 50 per cent and the market quotations of the stock fell 55 points on 130—that is 42 per cent. The money put in the property increased 50 per cent and the market value of the stock decreased 42 per cent.

Senator GORE. How much new stock was issued in the meantime?

Mr. KRUTTSCHNITT. None.

Senator WATSON. How do you explain that, Mr. Kruttschnitt?

MR. KRUTTSCHNITT. Senator, the who can explain what influences the market price of stock—what people are willing to pay for it—would make a fortune that would be beyond the dreams of the wildest avarice.

Senator WATSON. I think we all agree with you on that.

MR. KRUTTSCHNITT. I cite that to show that without any increase in the amount of stock, the market quotations have little or nothing to do with the intrinsic value. Remember, market quotations apply to a very small fraction of the stocks of conservative companies. There is a certain amount floating around that is bought and sold, but the great mass of the stock of the companies is held for investment, and is not on the market. The price would no doubt be very different if the entire stock were on the market.

Senator POMERENE. Has this company been paying dividends during these years?

MR. KRUTTSCHNITT. Yes; same dividend all along, same amount of stock.

Senator POMERENE. What amount?

MR. KRUTTSCHNITT. \$273,000,000 of stock; 6 per cent dividends. The dividend policy of a company has most to do with the price of the stock. I have no doubt that without any change whatsoever in the value of the Southern Pacific property, if the directors to-morrow should increase the dividend rate from 6 per cent to 10 per cent the stock would take a tremendous jump up, and would stay up, yet it is not the proper thing to do. It would be against the interests of the shareholders of the company en masse, yet it would increase the market quotations on the stock, and if the guaranty were to be based on that, possibly the directors would be justified in declaring such a dividend.

These considerations will show that market prices, which are subject to all kinds of influences, would never do as a basis for compensation for the use of the property. You would affect the interests not only of the shareholders, but the bondholders. I was going to say you would encourage improvident dividend policies. It is a fact that the company that in the past has pursued the most improvident, nonconservative dividend policy would probably get the best return, because its stocks would stand highest.

Now, we might have some roads that had a disproportionate stock issue to the real value of the property, and you might have market quotations that were unreasonably high, and a compensation based on those market quotations would be exceedingly high and not justified. Now, consider the rate of interest on bonds. If you were simply to pay the interest on bonds as a guarantee—take two properties as nearly as possible of equal value. One might have issued bonds at a time when the money rate was low; may have negotiated the sale skillfully, so that it got its money at a very low rate. The other company might have deferred selling its bonds for a few months only, and been compelled to pay a very much higher rate for the money. Its property would not be of any more value than the other, yet, under this proposed plan of compensation it would get a very much larger compensation than the other. There would be a premium put on poor management in selling the bonds and acquiring the money. Now, a very interesting case would be presented by the Southern

Pacific Co.'s ships. The Government has taken them over. The Shipping Board has fixed a charter price, based on the income derivable from those ships by the owners.

Under the President's proclamation the Shipping Board has notified the Southern Pacific Co. that it relinquishes control over their ships and turns them back to the company, to be controlled by the Director General of Railroads because these ships are part of a line owned by a railroad. If that is done, and we were paid on the basis of bond interest and interest on stock, the compensation we would get for those ships would be very much less from one agency of the Government than we would get from another, and the compensation we would get would be very much less than shipowners, controlling parallel and competing lines, who would be operating under the control of the Shipping Board, would get for their ships. Now, if you pay on the basis of income, those contradictions and anomalies vanish. I do not see how you could at all pay on the basis simply of the bond interest and interest on the stock, without causing the most profound disturbance in values, and among the stockholders and bondholders. It is not a sound or conservative basis, but a fictitious and unsound one, and one liable to all kinds of fluctuation.

The CHAIRMAN. If Mr. Kruttschnitt is through, I want to make a suggestion.

Senator CUMMINS. Inasmuch as this matter has been brought forward, I must ask Mr. Kruttschnitt a question or two. Mr. Kruttschnitt, no one has suggested that the market quotations for 1917 be taken into account in determining the value of stocks? It would be as unfair to the railroads to take any such abnormal time as a standard, or as a part of a standard, as it is unfair to the public, in my judgment, to take the earnings for 1916 and 1917. But suppose you take the market quotations for 1912, 1913, 1914, 1915, and 1916, these violent fluctuations have not occurred, have they?

Mr. KRUTTSCHNITT. Not as violent in the past 30 to 50 days, but the reasons that I have given apply to market quotations of stock, on principle. Perhaps you can take years where the fluctuations are not quite as violent, but in principle they apply just as much as if you took the violent fluctuations.

Senator CUMMINS. You have suggested taking the market quotations on the stock for 1917, up to date—up to the end of the year, and applying that to the Southern Pacific road, and it would have the very anomalous and extraordinary result that while you have added to the value of your property, its market estimate has been decreased, but if you will take the highest years which I have mentioned, from 1904 to 1915, the market quotations of your stock have been pretty near the same, have they not?

Mr. KRUTTSCHNITT. I do not think so.

Senator CUMMINS. Well, how much difference? I have got all those figures down in my office, but I find that in the accumulation of papers I have not got them here.

Mr. KRUTTSCHNITT. To show how little the market price of a stock varies with the increased income of a company, and increased income is the real criterion of its value, the Southern Pacific's monthly statements that appeared for the last 18 months have been uniformly good, with the exception of one or two months, where we had to put

in unusual expenses, due to causes that we could not control, such as distributing the expense of wages due to the Adamson law—the stock market prices were commented on by many of the directors. Market prices of the stock seemed to bear no relation whatever to the excellence of the company's statements, which reflected good management, and in the one or two months when we had very bad statements they did not seem to have any effect on the value of the stock.

Senator CUMMINS. They should not have.

Mr. KRUTTSCHNITT. If they should not, why should not any particularly good month have a good effect on the stock?

Senator CUMMINS. You must distribute this estimate of the public over a period of years in order that it shall be of any value. I understand perfectly a raid on the market may decrease or may increase the market quotations or market value, but in the long run, over a period of 5 years, or over a period of 10 years, is not the steadiness of the dividend-paying roads of the country upon the market very remarkable?

Mr. KRUTTSCHNITT. I do not think so. It produces just the reverse impression on me. In other words, that there is nothing more unstable or fickle than the value of stock.

Senator CUMMINS. What do you think was the range—the average market value of stock for the Union Pacific road for the year ending June 30, 1916?

Mr. KRUTTSCHNITT. I could not tell you at all.

Senator CUMMINS. Can you tell what the range was for the year ending June 30, 1912?

Mr. KRUTTSCHNITT. No.

Senator CUMMINS. Have you the figures at hand to supply that information?

Mr. KRUTTSCHNITT. No; I have not. Those figures would have to be gotten from the records of some good, reputable stock exchange.

Senator CUMMINS. Now, the difference in the outcome of the plan that you have proposed for compensation, or upon which you have commented favorably, and the plan for paying a reasonable interest upon the value of the property, as determined by the funded and unfunded debt and the market value of the stock, is about \$250,000,000 a year. That is to say, your plan will bring about an aggregate, substantially, of a billion dollars a year, whereas the other plan will bring about an aggregate guarantee of \$750,000,000 a year; and is your objection to it because it provides a less amount in the aggregate for the Government to pay, or because it works injustice in its application among the several railroads?

Mr. KRUTTSCHNITT. I could not be influenced by the last motive that you suggest, because I never knew what the effect would be on the returns to the railroads that you just mentioned, but here is another thought that occurs in respect to this question. You say—no doubt it is true—that you have proved that by statistics that the range of value of market prices of stocks have been reasonably uniform. In other words, it has been quite constant.

Senator CUMMINS. Up to the end of the fiscal year 1916.

Mr. KRUTTSCHNITT. Therefore the remuneration to be paid to the roads on such a plan would depend on the uniform market value of the stocks up to, we will say, that time, but all of the talent and

managing ability put into the roads in the years preceding the end of 1916 has increased very largely the net operating income of those roads, and the value to the owners has been greater through the exercise of ability and putting in additional money, yet under this plan of paying on the market value no account could be taken of that at all, because these additions of cash and accretions from net income brought about by good and careful management have little or no effect on the price of the stock.

Senator CUMMINS. Do you not think that the efficient and careful management of a property, which enables it to put a large surplus accumulated each year into the property rather than distributing it in dividends has some effect on the market sales of stock?

Mr. KRUTTSCHNITT. I have just explained our case, where we have had put in 50 per cent in a period of about 10 years, and the stock has fallen very much in value.

Senator CUMMINS. You have instanced, though, the end of the year 1916 in order to bring about that result.

Mr. KRUTTSCHNITT. Suppose we drop back to the end of the year 1915, which you took. I do not remember what the Southern Pacific stock sold for at that time, but I am quite sure that it did not sell up to par. It has not been to par for any length of time for a number of years. Therefore it would follow that the price of the stock had fallen from about 130, which was the maximum at which it sold about 10 years ago, to less than par at the end of 1915, and in the interim a sum somewhat less than \$400,000,000 had been put into the property.

Senator CUMMINS. Did you say your stock was quoted on the market at less than par on June 30, 1915?

Mr. KRUTTSCHNITT. I will not say that positively, but I will say that our stock has not been up to par for any length of time for quite a long while. You may find an occasional quotation where it was at par.

Senator CUMMINS. Your general view of it, then, is that the market value of stock is not influenced by the accumulation of a surplus by the company, no matter whether it is put into property or held in the treasury of the company?

Mr. KRUTTSCHNITT. I won't say it is not influenced at all; but it is not proportional to the accumulation of the surplus. There are so many influences governing the price people pay for stock that it is an extremely unreliable criterion of the value of a property or amount of rental you should pay for it. In other words, the net income of the property does not seem to bear any relation to the price at which the stock is quoted.

Senator CUMMINS. You understand that, of course, no one desires to deprive any company of its right to just compensation for the use taken by the Government, ascertained in a way in which the laws of the country provide, and the only question that we have been talking about here is what offer shall the Government make to these various companies in lieu of the just compensation which undoubtedly you would receive?

Mr. KRUTTSCHNITT. Why should an offer be made in lieu of just compensation?

Senator CUMMINS. The President suggested that. I am not quarreling with him or with his policy. That is the policy of this bill.

It is the policy of the President's message to make an offer on a certain basis to the railway companies, which they are to accept in lieu of the compensation which a court would award, if they desire to do it. That is entirely within the control of the railway companies. Now, I have thought that the best substitute for the ascertainment of the value of the property was the estimate in which the public held the property, as shown in the market quotations in the various financial centers of the United States. To me it indicates what the public believes the property to be worth over and above the mortgages or liens which have been put upon it. I understand that that is not accurate. Nothing is accurate except the award of a court showing what is just compensation, and no company would be compelled to accept it if it thought the other plan was better for itself and for the country. I wanted you to fully understand the foundation of the suggestion that was made. It has not ripened into any concrete proposition, although it may.

Mr. KRUTTSCHNITT. I think I understand it, Senator. My view about the public's estimate of the price of stock is very largely this; that some one has bought some stock and comes along and tells us, "So-and-so is a good buy; why don't you get some?" and probably So-and-so goes and gets some, and he passes it on to his neighbor. "Why, I bought some of this. It is a good buy; get some," and he gets it. I don't suppose there is one man in ten thousand who buys a stock who goes into a study of what the stock is intrinsically worth. That is proven by the fact that you may put out ever so good statements and it does not affect the price of your stock, and you may have very bad statements, on the other hand, that do not seem to affect it. In other words, the public buys on impulse largely. I confess I have bought some that I did not know an earthly thing about, simply because some friend said he had bought some and thought it was a good thing.

Senator CUMMINS. That is true of Government bonds; it is true of bonds of municipalities; it is true of stock—all stocks that are issued throughout the country—is it not?

Mr. KRUTTSCHNITT. I beg to differ with you on that. It is entirely different from a Government bond. The Government bond has the stamp of Government authority.

Senator CUMMINS. Why is it below par?

Mr. KRUTTSCHNITT. Because there are so many of them on the market the supply exceeds the demand. But you take a stock—turned out by running a printing press—I suppose people buy it in many instances simply because somebody else buys it, and without any real information as to the solvency or actual values behind it.

Senator CUMMINS. That is just the difference between your plan and the one I have suggested. Your plan makes the product of a printing press worth par and mine does not.

Mr. KRUTTSCHNITT. I have no plan. I have not suggested any plan.

Senator CUMMINS. I withdraw that. I mean the plan proposed by the President and in the bill.

Mr. KRUTTSCHNITT. I certainly do not understand how what I am advocating should make worthless stock worth par.

Senator CUMMINS. As a whole. I do not mean with reference to any particular railroad company.

Senator ROBINSON. If Senator Cummins has concluded, I move that we take an adjournment until to-morrow morning at 10 o'clock.

The CHAIRMAN. I would like to have the committee extend that to 10.30, to arrange for a room on the next floor, where the committee will meet in what is known as the Immigration Committee room, on the fourth floor—Room 410. The committee stands adjourned until 10.30.

(Whereupon, at 5 o'clock p. m., the committee adjourned until Wednesday, January 9, 1918, at 10.30 o'clock a. m.)

GOVERNMENT CONTROL AND OPERATION OF RAILROADS.

WEDNESDAY, JANUARY 9, 1918, 10.30 A. M.

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE COMMERCE,
Washington, D. C.

The committee met pursuant to adjournment at room 410, Senate Office Building, Senator Ellison D. Smith, of South Carolina (chairman), presiding.

Present: Senators Pomerene, Robinson, Borah, Underwood, Cummins, Townsend, La Follette, Poindexter, McLean, Watson, and Kellogg.

The CHAIRMAN. The committee will come to order. Mr. Thom, who is your next?

Mr. THOM. Senator Kellogg asked me last night if Mr. Kruttschnitt could appear again this morning, and Mr. Kruttschnitt is here, and I presume from that question that Senator Kellogg wants to ask him some additional questions.

The CHAIRMAN. Well, Senator Kellogg is not present, and the time of the committee is very valuable.

Senator McLEAN. I would like to ask Mr. Kruttschnitt one question.

The CHAIRMAN. Senator McLean says he desires to ask Mr. Kruttschnitt a question.

STATEMENT OF JULIUS KRUTTSCHNITT—Resumed.

Senator McLEAN. I do not know whether it has been answered in my absence or not. If it has, why, it will be not necessary for you to reply, but it has been claimed that the increase in cost for labor and supplies which the railroads have had to meet during the last year has been offset by increases in the volume of traffic and improved methods of operation. I would like to ask you whether that is so or not. It has been claimed, very stoutly, and I think the matter was put before the Interstate Commerce Commission in the hearing—I believe in its hearing 20 per cent increase was asked for—that these expenses which you have had to meet have been offset by the increased volume of traffic and the improved methods of operation.

Mr. KRUTTSCHNITT. The answer to that would be that it is quite possible to increase the volume of traffic so much, if that traffic carries a thoroughly compensatory rate, to offset increases of a certain amount in material and labor. It may be, and I think it is the case, that on some roads where the increased volume of traffic has been extremely great, without a material decrease in rates, that they have

offset, and perhaps in some cases more than offset, the increased prices of material and labor up to the present time, but that is not true of the roads of the country generally. They have not done it. As I said yesterday, take the returns of the principal roads as they are made monthly to the commission and you will find that while their growth is increasing in 1917, and is far ahead of 1916, that their net income is less, and that is proof positive that nothing that they have done in the way of more efficient operation has been able to offset these constantly mounting increases. In other words, you can not make a general answer in the affirmative to the question you ask.

Senator McLEAN. It was also claimed that the application of earnings to capital was entirely indefensible, and that all of this expense should be provided by an increase in capital stock, and I would like to ask for your opinion with regard to that.

Mr. KRUTTSCHNITT. If under these surpluses, or what is left after paying dividends which have been earned by the roads, under regulation, that has been stronger and stronger every year, the roads have not been permitted to handle any business except at rates prescribed by regulating bodies, that is a guaranty or a voucher for the fact that the rates are reasonable, and how anyone could claim that any increase in surplus, governed by more volume of traffic, at rates which have been pronounced reasonable and prescribed by the interstate and State commissions, does not belong to the shareholders, I can not understand at all. If it does belong to them, it is their right to do anything legitimate with them that they wish, and if they wish to put those surplus earnings in the property instead of pocketing them, which they have a perfect right to do, why, it seems to me it is a policy that makes for conservatism, for better service to the public in every way.

Senator McLEAN. I wanted to get your opinion in regard to that, as the subject was brought up in the hearing.

Mr. KRUTTSCHNITT. Another reason that occurs to me is this: The return on the property investment of railroads, according to the table of the Interstate Commerce Commission, has run from 4 per cent to a little over 5. No money could have been borrowed by railroads in the last two years at rates approximating even 4 or 5 per cent, and what a road could live on, if it relied on 6 or 7 per cent money for improvements, when it could earn only 4 or 5 per cent on it, is hard to understand. It seems to me it would be a well devised route to bankruptcy. The increase in the capitalization of the roads of this country from 1900 to 1917 has been—if you will allow me—I don't want to quote. I could do it fairly accurately, but I would rather give the figures. I thought my examination was through, Senator, and I left a lot of papers. I do not think I have it here, but I will quote from them as near as may be. I think I could do so fairly accurately. In the 16 years from 1900 to 1916 the capitalization of the roads increased in the first 8 years of that period at the rate of \$630,000,000 per annum. The rate earned by the roads on that increased capitalization was fair. I have forgotten the figure, but it was between 5 and 6 per cent. In the last 8 years of the 16-year period the yearly increase in capitalization has been the same—\$630,000,000 per annum. In the whole period it would be eight times that, which would be in round numbers, \$5,000,000,000 and

on the second increase in capital of \$5,000,000,000 they earned absolutely nothing. There was no return and with no return—in other words, their net income was \$32,000,000 less in the last period of 8 years, after an increased capitalization of \$5,000,000,000, than it was in the first period. That shows that if this increase in capitalization had all been made in bonds or borrowed money, on which should be paid anywhere from 5 to 6 or 7 per cent, why, you would have had a guaranty of bankruptcy—it could not have been avoided.

Senator GORE. What was the average during the last eight years?

Mr. KRUTTSCHNITT. The average during the last eight years, not on all capital, Senator, but on the increased capitalization, was 32 millions worse than nothing.

Senator GORE. But I did not understand what the annual increase was.

Mr. KRUTTSCHNITT. Six hundred and thirty millions a year.

Senator GORE. During the first period?

Mr. KRUTTSCHNITT. It happens to be the same in the second, within a million or two dollars.

The CHAIRMAN. Senator Kellogg, the remark was made that you desired to ask Mr. Kruttschnitt some questions this morning. Are you ready now?

Senator KELLOGG. I suppose, perhaps, the questions may have been answered. I wanted to ask Mr. Kruttschnitt what would be the effect on the railroads of the country if they were limited to just a fair dividend on the stock, without a reasonable surplus to invest in the property, other than from borrowed money. Directing your attention to this, of course, if the Government makes a guaranty which is permanent, and the roads are to remain for all time in the hands of the Government, of course a small rate of dividend, with the Government guaranty back of it, would be reasonable, because it would be a Government security and the Government would have to keep up the roads and furnish the money for the improvements and betterments, but what would be the effect of a temporary guaranty of simply dividends, without any fund to invest in the property beyond borrowed money? I would like your general views on that.

Mr. KRUTTSCHNITT. That I answered, really, in answer to Senator McLean's question, but I will repeat it. If the income was simply a dividend on the market value of the stock, there would be no surplus. The roads would be compelled to make all of their betterments and additions out of borrowed money. Now, if the roads had never been able to earn, even under the most favorable circumstances, over 5 or 5½ per cent on the money that they got in the property—money can not now be obtained by the roads under 6½ to 7 per cent—any schoolboy—

Senator KELLOGG. I will say that if you have already answered that question, do not answer it again.

Mr. KRUTTSCHNITT. I was just going to add that any school boy, almost, could see that if you borrow money at 7 per cent and put it in a business where you would only make 5 or 5½, why, it does not pay. You could not do it. It is just like a merchant. A merchant will borrow money from a bank, we will say, at 4 per cent, and through his energy and talent for business, can make 7 per cent. He is ahead 3 per cent, and he can afford to go borrowing, but if he has

to pay 7 per cent for the money and can only make 3 or 4, why, he simply can not borrow.

Senator McLEAN. I asked the question, because it was claimed before the Interstate Commerce Commission in the last hearing that all the betterments should be paid for by increased capital, and it was indefensible to take surplus earnings for that purpose.

Senator KELLOGG. Suppose the money can be borrowed at reasonable rates of interest, and not be beyond what is a fair return on capital, do you consider it good railroading to pay for the entire betterments and improvements out of borrowed money?

Mr. KRUTTSCHNITT. For this reason: Interest on bonds is an absolutely necessary and unavoidable expense. You can not get away from it. If you fail to pay the interest on your debts, you go into bankruptcy. The business of the roads, as evidenced by the figures of the commission, is subject to very considerable fluctuations. They are not compelled to pay dividends on stock. The dividends are paid, if they are earned. If they are not, they are not paid. In other words, you might consider the stock as a sort of a buffer between the bonded debt and the public. You must pay the interest on your bonds. You need not pay the dividends on the stock unless you earn it. Now, if you had nothing but stock, or substantially all of your capitalization—if you had nothing but bonds, and and substantially all of your capitalization was in bonds, you would be, to use a slang expression, sailing so close to the wind that if the slightest storm came up, you would be wrecked.

Senator UNDERWOOD. May I ask you, Mr. Kruttschnitt, how any reasonable business man can expect to borrow money and continue to borrow money, without increasing the equity on which it is based?

Mr. KRUTTSCHNITT. I think the answer to that is almost self-evident. He can not do it—he can not continue.

Senator UNDERWOOD. There has got to be a margin for a safe loan between the amount of the loan and the amount of the value of the property?

Mr. KRUTTSCHNITT. That is the idea I tried to convey, in stating that the stock was somewhat of a buffer or a spring to absorb shocks.

Senator UNDERWOOD. Therefore, if your loans are increased, the value of your property must proportionately increase or you can not borrow the money?

Mr. KRUTTSCHNITT. Yes; and unless you can make a better return on your property than the return expected by the investor on the money he loans you, you can not borrow at all.

Senator TOWNSEND. How it is, Mr. Kruttschnitt, about the capitalization and bonded indebtedness of the Michigan Central Railroad? What is their proportion?

Mr. KRUTTSCHNITT. I have not the slightest idea.

Senator TOWNSEND. The bonded indebtedness far exceeds the stock issue, does it not?

Mr. KRUTTSCHNITT. I do not know. I am totally unfamiliar with the Michigan Central.

Senator TOWNSEND. I think it does. I think that is in evidence before the committee, and I was wondering what explanation you could make of that. If I understood your testimony a moment ago, it was to the effect that if your bonded indebtedness exceeded your

capital stock, you were on the road to bankruptcy if you kept that up. Am I correct about that?

Mr. KRUTTSCHNITT. Yes.

Senator TOWNSEND. Now, if it should be shown, as I think it has been shown, that the New York Central road has for years carried an excess of bonded indebtedness over its capital stock, and the road has been reasonably successful and prosperous during the time, how do you account for it if that is true?

Mr. KRUTTSCHNITT. Well, I would really answer that question in the answers to the preceding questions. I do not know anything about the New York Central's finances, but I would say, to take a hypothetical case, if a road has a bonded indebtedness out of all proportion to its stock, and has been successful, the only reason it has been successful is that it has been fortunate. It could not possibly expect to weather any very serious storm if it did not have some means of absorbing the shock of the storm.

Senator UNDERWOOD. I might suggest there—I don't know anything about the stock or the bonded indebtedness of the New York Central, but the stock does not always represent the actual value of a road. The stock might not have increased, and betterments and more money had gone into the road. There may be the actual value on which to increase the bonded indebtedness, whether represented in the stock or not.

Mr. KRUTTSCHNITT. That is the case with a great many roads. They have but a very small stock; and if you measure their income from the return on the stock, it may appear unreasonable and excessive, not because the return in itself is unreasonable but because the basis on which you measure it is not a fair one.

Senator TOWNSEND. I may be mistaken. I am just talking from memory; but that is my memory, that that relation between stocks and bonds exists. We had some difficulty about it.

Mr. KRUTTSCHNITT. You mean on the Michigan Central?

Senator TOWNSEND. On the New York Central lines. We had some difficulty before the Finance Committee when we came to tax certain railroad properties, as to establishing a basis which would be equitable and just to all railroads. We found, for instance, the New York Central and the Pennsylvania were in the same class of roads, so far as strength and prosperity was concerned. The New York Central, small capital, large bonded indebtedness. The Pennsylvania, large capital and small bonded indebtedness; and yet, as I say, they were reported to us as being about equally prosperous, and that condition has maintained for years. That is my memory of what the situation was when that bill was up for consideration.

Mr. THOM. May I interpolate a remark there, Mr. Chairman? Senator Townsend is entirely correct in his memory of that situation. That situation, however, is somewhat illuminated by these facts that I am about to relate, as bearing on the question now before this committee. In preparing to present the case of the railroads before the joint committee having the matter under investigation, we had a scientific study made of this question of the proper relation between the amount of stock and the amount of bonds. We realized, of course, that if a company is to remain permanently solvent, there must be a point which must not be crossed by the debt, and the line

running through that point is known to students of finance as the danger line. Our economists fix that line at the maximum of 60 per cent of debt and 40 per cent of stock.

Senator UNDERWOOD. That is, you mean a surplus of 40 per cent of the value?

Mr. THOM. Yes; the real value in the road must be represented by not more than 60 per cent of debt, with a margin of 40 per cent interest in the owners in it, represented by stock. That conclusion was especially arrived at, Senator La Follette, by Mr. Ericson of your State, whom you may know, and it was declared to us by these gentlemen that at least 40 per cent of the investment must be represented by the interest of the owners, and that must be preserved, unless there would come danger and insufficient basis for new operating.

Now on that theory we made a list of the railroads of the United States, as to which could get new capital, in the shape of the proceeds of stock at par, and we found that the New York Central did not answer that test, and we put the New York Central in the list of roads that could not dispose of their stock at par. While we had that list under advisement, we were told "The New York Central is now disposing of an issue of 25 millions of dollars of stock at par," and we did not feel that we could, in the midst of that negotiation, publish anything that would embarrass our friends; so we did not give any publicity at that time to that list of roads, because we were afraid that our—what might be deemed our theoretical views of this question might form an impediment in the practical carrying out of this effort of the New York Central to float 25 million dollars at par. Well, they tried it, and in a little while it completely failed. It put the balance of their stock down well below par. They were unable to do it, and, therefore, without any embarrassment to them, we were enabled to add the New York Central to the list of roads that could not float their stock at par.

Senator GORE. Rather a confirmation of your theory?

Mr. THOM. Yes, sir.

Senator TOWNSEND. May I ask you whether, in your judgment, that was the real cause they could not sell their bonds at par?

Mr. KRUTTSCHNITT. I think that had a great deal to do with it. I do not believe that a railroad that is all the time absorbing its values in debt can long continue to float its stock at par. Of course, there are a great many circumstances operating besides that law, but we believe that that law is adequate for that purpose, and it is safe financing, and it is not safe when you go beyond that danger mark, and whether that line is correctly drawn at 60 per cent, or where it is drawn, it is certainly true that the line of safety exists somewhere and that there must be some proper proportion between the amount of borrowed money and amount of capital contributed by the owner.

Senator TOWNSEND. When we had this matter up—I think my memory is correct on that—by the joint investigating committee of the two Houses the same statement was made that that issue of stock had failed to be disposed of at par, but not a railroad suggested the argument that you put up, did he?

Mr. THOM. I do not know whether he did or not. We had it to present at the proper time. We are going to present it to Mr. Ericson when he comes on the witness stand.

Senator TOWNSEND. The argument presented, as I remember it, was that it was due to the overstrict regulation on the part of the Federal Government and the confusion that was caused by too many jurisdictions interfering in the issuance of stock.

Mr. THOM. Referring to those matters, we are dealing with the general situation, not with the New York Central. We have assumed that in your joint committee there will be some appreciation expressed of the general economic principles that govern the whole situation, and in bringing those economic principles before you we are going to bring them as one, that there must be regulation based upon the ability to float stock at par, in order to prevent bankruptcy of these roads by the increase of debt without a proportionate increase of assets. What I mean by proportionate increase of assets—I don't mean a dollar debt and dollar assets, but to preserve the assets in the dollar of debt, plus the necessary margin beyond the debt, and you can not have a margin of over the debt due—that is safe—and then increase the debt by a dollar, and then increase the assets by a dollar, and still preserve the proportion. We shall argue before your committee, as we shall argue here, that it is necessary to increase and preserve your proper proportion when you increase your debt.

Senator TOWNSEND. I have agreed to what Mr. Thom is saying. That is, it has seemed to me that some such rule was absolutely necessary, but I had supposed it had been absolutely ignored, because, as I said before our committee, the railroads were divided into two classes. First, where the stock predominated, and then those where the bonds predominated, and those seemed to be equally prosperous, and I thought there was some legerdermain—something connected with it which I did not understand—which was being employed to float stock under such conditions as that.

Mr. THOM. No, Senator. We have got a great deal to say to you and the joint committee on that subject.

Senator GORE. Is this Ericson report in such form that we can have it printed in the hearing?

Mr. THOM. No; he is going to give it in his testimony.

Senator WATSON. Mr. Kruttschnitt, what is your opinion of a national charter for railroads, and what is the result of having 49 commissions dealing with the question of rates, one for each State and the Interstate for the Nation, instead of one general authority?

Mr. KRUTTSCHNITT. I tried to answer that question very fully in my testimony before this joint committee last March.

Senator WATSON. Well, the reason I asked that question was because I thought it would be pertinent at this time and to get your opinion in this hearing. I would not want you to go fully into it, if you can just generalize.

Mr. KRUTTSCHNITT. I would answer in a general way, and I would like then the privilege of just taking my answers for my testimony before the committee in March and putting it in as a separate answer.

Senator TOWNSEND. That will be all right, unless there be objection to it.

The CHAIRMAN. Unless there is objection, it will be so ordered.

Mr. KRUTTSCHNITT. I pointed out last March the embarrassment that the railroads were meeting with in having to serve so many

masters and expressed my views in favor of some national incorporation that would relieve them from those embarrassments. As I say, the reasons at that time were given very fully, because I had time to sit down and prepare these reasons and put them in the shape of a written memorandum.

Senator WATSON. Mr. Chairman, then I ask that Mr. Kruttschnitt's testimony on that point be incorporated in these hearings.

The CHAIRMAN. That will be agreed to. Mr. Kruttschnitt, I would like to ask you this question: You said yesterday, I believe, that on account of the order of the Food Commission you were able to pool certain food products and thereby handle them more expeditiously as to the betterment of the traffic, by virtue of the Government having the power to make that order.

Mr. KRUTTSCHNITT. I think you misconstrued my language. I did not say that we were enabled to pool traffic. I said that the Food Administrator, Mr. Hoover, had given some very helpful orders as to the routing of freight, taking it away from the congested area east of Chicago and by diverting it to the Gulf ports, where there was no congestion.

The CHAIRMAN. That was under Government power, that you might not have felt at liberty to exercise, and, therefore, it was helpful to you in moving this congested freight?

Mr. KRUTTSCHNITT. Decidedly so.

The CHAIRMAN. Now, I want to ask you this question: Do you or do you not believe that in the condition that we now find the railroads in reference to certain legislation of certain private interests, that if the management of the roads could be approximately maintained, and, as you mentioned yesterday, the esprit de corps of the employees, that Government supervision during this particular peculiar period—Government control would be better in mobilizing and meeting the exigencies of the case than private control, unlimited?

Mr. KRUTTSCHNITT. Mr. Chairman, the railroads made up their minds from the beginning that they were going to be good soldiers and be just as good soldiers as they knew how, and I do not want anything that I have said here in answer to questions or any voluntary statements to be construed as criticism of what has been done. We accept what has been done as something in the opinion of the President—the Commander in Chief—as necessary, and we are going to work, each and every one of us, as loyally under the new conditions as we did for our owners solely in the past. I think under existing conditions the President must have had reasons, and good reasons, for doing what he did, and we don't question them, not in the least. We intend to support his policies to the very best of our ability.

The CHAIRMAN. The reason that I asked the question was that, familiar as you are with conditions in the railroads—particularly familiar with the peculiar conditions that now exist, not as a railroad official or not as representing the railroads, but as a representative of the interest involved—I just thought perhaps you would feel at liberty to make an affirmative statement from that standpoint as to whether, in your judgment, at this time the control by the Government, in mobilizing the resources of the railroads for the purpose for which they are being used, would not be better than giving

unlimited control; that is, suspending for the time being any statutes that we may have, restrictive or otherwise, and turning it over to the railroads unlimited?

Mr. KRUTTSCHNITT. I think what has been done has been done for the best. I think, as I explained yesterday, that the railroads could have done a good deal more by voluntary agreement and under the organizations that they themselves had created than they could if they had had greater Government support and assistance, but it is quite conceivable that assistance in a good many of those directions could not be given to private ownership, and I may say for myself individually—I have no right to speak for anyone else, and only said what I did say before from the opinion I have gathered from general intercourse with railroad executives—that they have all accepted the situation as the best thing to be done. It is an order of the Commander in Chief of the Army and Navy in time of war, when our country must, above everything else, win the war. We have no criticisms to make, and we propose to do our level best to make the existing conditions successful. I have already, as indicated in the list of instructions that I sent to our chief executives yesterday, exhorted them to work as hard for the success of the properties in their jurisdictions, under the new conditions, as they did for the shareholders, and I have not the slightest doubt that each and every one of them will do it; and I know that a great many other roads have done the same thing, probably all of them. I only know of some, but I am convinced that all of them will do the same.

The CHAIRMAN. If it is agreeable to the committee, hereafter, when we have finished with the general questions of the witness, I will consider it the rule of the committee that each one as in their order on the committee will be given an opportunity, if they see fit, to ask questions, and if that is agreeable to the committee, if Mr. Kruttschnitt is through with his testimony, I will just ask each member if he has any further questions to ask.

Senator UNDERWOOD. Mr. Chairman, I think we tried that out once and it did not work satisfactorily. I do not interrupt often, but sometimes there is a pertinent question comes up that it is very necessary to offer, and I think we have been running satisfactorily. I would much prefer to have it run as it has.

The CHAIRMAN. Very well. If the committee prefers the order that we have observed, the chairman will be very glad to carry that out.

Senator CUMMINS. Mr. Chairman, I desire a last question to ask in regard to a subject described by Mr. Kellogg.

Senator UNDERWOOD. Mr. Chairman, unless the committee desire to go into executive session to settle it, I would prefer to let the matter rest as it is.

The CHAIRMAN. Is that agreeable? I have observed that the rule we made under the old chairmanship was, when we were through with the witness that each member of the committee was to ask in his order if he had any further questions.

Senator ROBINSON. That applied that the witness should be permitted to make a direct statement without interruption. I never heard in the history of the committee anything different. It was found impracticable to do that.

Senator UNDERWOOD. We tried that on the joint committee and it broke down.

The CHAIRMAN. All right. Then you will be permitted to ask him a question now, Senator.

Senator CUMMINS. It is in reference to the accumulation of a surplus from earnings which may be used in the betterments or additions to the property. Are you familiar with what might be called the British situation, in connection with the railways?

Mr. KRUTTSCHNITT. I have not made a close study of it. In a general way, I do know about it.

Senator CUMMINS. We are likening this measure anyhow to what was done by Great Britain. Do you remember the average dividends that were paid upon the stocks of the British railways, prior to the war?

Mr. KRUTTSCHNITT. No; I have never seen those in print.

Senator CUMMINS. Do you know what surplus after the payment of dividends was accumulated by the British railways from earnings?

Mr. KRUTTSCHNITT. I will say at the outset, Senator, that I am totally ignorant about the statistics of the British railways. The sources of my information are two: I was privileged to read a letter written, I think, by Col. Thornton, now a member of the British executive committee, to a friend. He outlined this British situation. There is nothing in it whatever about the amounts of the dividends or the rates of dividends or the capitalization. It was just written in general terms. And I have also read a statement drawn by Mr. Acworth, a very able student of British railway affairs, and his statement did not include any figures or statistics.

Senator CUMMINS. The point of my inquiry is this: Great Britain took over the railways and guaranteed the net income of the railways for the year preceding the war—measured by the year preceding the war—and the question comes up here with regard to our situation, as compared with theirs, and I would like to know if you have inquired into it. If not, I will have to ask some other witness with regard to the surplus over and above the payment of dividends which have been accumulated by the British railways in the year preceding the war.

Mr. KRUTTSCHNITT. No; I do not. I couldn't give any information about that. I have never seen it, and I know nothing about it.

Senator CUMMINS. I do not pretend to have definite and conclusive information upon it, but what I have leads me to believe that the net income of the British railways, after the payment of interest and dividends, did not amount to more than one-half or 1 per cent—one-half of—I do not say of 1 per cent—or to 1 per cent.

Mr. KRUTTSCHNITT. I do not know anything about that.

The CHAIRMAN. Are there any further questions of any member of the committee? If not, Mr. Kruttschnitt will be excused.

Mr. Thom?

Mr. THOM. Mr. A. C. Dustin, of Cleveland, Ohio, wants to be heard at this point, Mr. Chairman.

The CHAIRMAN. Mr. Dustin, will you come around?

Senator CUMMINS. Before he testifies, Mr. Chairman, I think that we ought to bear in mind this situation, in view of the question put to Mr. Kruttschnitt by Senator Watson: He has put into the record

Mr. Kruttschnitt's argument in favor of Federal incorporation. Everybody knows that I am not hostile to that movement, but we had a great deal of testimony before the joint committee with reference to that question, and especially had we a great deal from the representatives of the various State commissions throughout the country who were opposed to it, and I think it will be fair, if we are going into that question at all, in order to be fair, we ought to consider all the testimony developed before the joint committee on that matter. If we take one, we ought to take all.

Senator KELLOGG. Mr. Chairman, I merely wish to make a statement. Could not Senator Watson's question be withdrawn? The entire testimony, I suppose, as printed by the subcommittee, is available for this committee to examine, is it not?

Senator WATSON. It has been printed?

Senator KELLOGG. It has been printed. I am not sure whether the last testimony has been printed or not.

Senator GORE. Could not the clerk make a sort of a digest?

Senator WATSON. If that be true, I should be very glad to withdraw the question.

The CHAIRMAN. I understand from the clerk that the testimony has been printed, up to the time of the San Francisco hearing.

Senator CUMMINS. We will have this understanding then, instead of putting Mr. Kruttschnitt's testimony on that point in as part of that record, it could be understood, of course, that the committee, if it desired to do it, could consider all of the testimony that was put in before the joint committee upon this subject.

Senator GORE. Have the clerk make citations of it.

Senator WATSON. I will withdraw the question on the subject of the incorporation.

STATEMENT OF MR. ALTON C. DUSTIN, OF CLEVELAND, OHIO, PRESIDENT OF THE FORT SMITH & WESTERN RAILROAD CO.

The CHAIRMAN. Will you give the stenographer your name and your official connection with the road?

Mr. DUSTIN. Alton C. Dustin, Cleveland, Ohio, and I am the president of the Fort Smith & Western Railroad. I would like to call the attention of this committee to the noncompensatory character of the method of computing the compensation of small railroads, provided in the bill, where the President is given the authority in the event of a disagreement, to give them 90 per cent—not exceeding 90 per cent of their standard income. The road I represent, and it is typical of a large number of small roads in the new and undeveloped sections of the country, showed net earnings for the fiscal year ending June 30, 1915, of—speaking in round numbers—\$53,000. The fiscal year ending June 30, 1916, \$62,000. The fiscal year ending June 30, 1917, \$147,000, or an average of only \$87,000; while during the calendar year 1917 we have run into earnings of \$244,000.

Now, this railroad, like a good many others, is affected in its revenue by conditions that are purely local. It is not necessary, unless some member of the committee would care to make inquiry, perhaps to go into the reasons for that, but those are the facts, and I have a suggestion that if in section 2 of the bill, at the top of page 3, after

the words "such standard returns," the difficulties I mention would be obviated, if there could be incorporated something along the following lines: "And in special cases where such standard return is found by the President to be noncompensatory, so much in addition thereto as the President, under the facts of such special cases, may deem just, not exceeding in the aggregate the current net operating income of the carrier." That's restricting these small carriers, who have been building up their roads—respecting the power of the President to give them their current operating income. I am speaking for our railroad, which is in the hands of a receiver. I know that if we are limited to the 90 per cent of the average of the three years we will have very serious difficulties.

Senator UNDERWOOD. What do you mean by current operating income—gross income?

Mr. DUSTIN. No.

Senator UNDERWOOD. Net income?

Mr. DUSTIN. The language is "current net operating income." It would mean the net income earned by that particular carrier that year. In other words, the President's authority would go that far.

Senator CUMMINS. Give them what they actually made?

Mr. DUSTIN. Give them what they actually made.

Senator CUMMINS. Last year?

Mr. DUSTIN. Not last year, but what they happened to make the year in question.

Senator GORE. To give them what they would have made if it had not been taken over?

Mr. DUSTIN. On what they actually do make.

Senator ROBINSON. Under this new system of cooperation, a given road might by reason of pooling freight and by changed conditions brought about through the combination of all the roads, make a great deal more or a good deal less than it would if left free to operate itself; but the standard he sets up is whatever that road already earns, give it to it, if the standard provided in the present bill is not adequate.

Mr. DUSTIN. That is it. My reason for that is this: That we all know that while we could get quick action in getting the 90 per cent, and probably quick action under this provision to get what the railroad is positively entitled to, if there was a controversy through the Court of Claims, it might take several years, and in the meantime somebody has got to provide the sinews of war to carry on the property, and I suggest this amendment for your consideration, as affecting special cases.

Senator POMERENE. How old is your road?

Mr. DUSTIN. The railroad was completed about 13 years ago.

Senator POMERENE. Where is it located?

Mr. DUSTIN. It runs from Fort Smith, Ark., to Guthrie, Okla. December, 1913, it took trackage in Oklahoma City.

Senator POMERENE. That is in Arkansas, undeveloped territory.

Mr. DUSTIN. It was in the Indian Territory. This railroad crossed the Indian Territory, and when it was built all of those lands were owned by Indian tribes. It took years and years to get the land divided among the Indians. Then Congress put restrictions on their rights, which prevented settlers from coming in, and the road was

built finally to open up a large coal field, but those coal lands belong to the Choctaw and Chickasaw Indians, and there is very limited power of leasing, and very little of the coal land has been developed, so that the railroad only has begun to come into its own within the last year.

Senator ROBINSON. What is the approximate length of your line?

Mr. DUSTIN. It is 217 miles from Fort Smith to Guthrie and 33 miles running down to Oklahoma City, but the line we own ourselves is only 197 miles; and then we operate 20 miles on trackage of the Kansas City Southern and 33 miles of trackage over the Missouri, Kansas & Texas.

Senator ROBINSON. It is an independent line, is it?

Mr. DUSTIN. Yes.

Senator ROBINSON. What have you in the way of property value?

Mr. DUSTIN. Well, I can only state that there is a foreclosure going on now, and the amount due on the bonds—the bonds only draw 4 per cent interest. The amount due on the bonds is something over \$9,000,000. There has been no interest paid to the bondholders for 10 years. The bondholders form a committee and have been carrying the property and furnishing the money, and when the receiver wanted to get money on the receiver's guaranties he could only get it by the individual guaranty of the bondholders.

Senator ROBINSON. How long has the receivership been in existence?

Mr. DUSTIN. It was put in the hands of a receiver in October, 1913.

Senator ROBINSON. Is it buying itself out now?

Mr. DUSTIN. It earned \$244,000 above operating expenses, taxes, and rentals in the last calendar year.

Senator ROBINSON. And interest on bonds?

Mr. DUSTIN. No.

Senator ROBINSON. What interest would that have paid on the bonds?

Mr. DUSTIN. Counting the par value of the bonds—\$6,240,000—about 4 per cent.

Senator GORE. What is the amount of stock outstanding?

Mr. DUSTIN. The stock will be wiped out on any reorganization, because the bonds, with the accumulated interest, are more than the property is worth.

Senator ROBINSON. And the language you have suggested there as an amendment to the bill designed to cover the case of all railroads that have been during the years 1915, 1916, and 1917 under receiverships?

Mr. DUSTIN. No; I do not think it has anything to do with receiverships. Under the bill as now drawn the President's power is limited to giving the railroads the 90 per cent of the average income, and this would apply to any special case where such average was not compensatory.

Mr. THOM. Where he found it to be noncompensatory.

Mr. DUSTIN. Yes; where he found it to be noncompensatory.

Senator ROBINSON. Take the case of a railroad that during the three years—if such case exists—1915, 1916, and 1917 may have been operated at a loss. Have you given thought to that case?

Mr. DUSTIN. This would reach that case—this amendment.

Senator ROBINSON. There are cases of comparatively large systems that might fall within that clause, are there not?

Mr. DUSTIN. Yes.

Senator ROBINSON. Now, what I am asking is, is the language that you suggest there intended to embrace all of those cases, or is it merely directed to remedy the matter as to short lines?

Mr. DUSTIN. All cases where the average net revenue the President finds is not compensatory, and then the President is authorized by this language to provide them with such an amount as he considers just, not exceeding what they actually earned.

Senator POMERENE. Leaves it to his discretion.

Senator ROBINSON. So that that would prevent the Government from committing itself to the policy of maintaining and guaranteeing a dividend to a road that was not actually earning it?

Mr. DUSTIN. Yes.

Senator UNDERWOOD. Let me ask you this question: I suppose that your road and other roads in similar condition, that are on the main trunk lines, have a tremendous freight throughout the country?

Mr. DUSTIN. Yes.

Senator UNDERWOOD. If the committee were to incorporate an amendment in this bill, so that the President could exempt roads of that kind from this order, and not take them over at all, and leave them in their present status, would that be more satisfactory?

Mr. DUSTIN. I am not able to answer that, and I will explain in a few words why. It would be a mere guess. For instance, in the summer of 1913 we took a trackage into Oklahoma City, incurring a fixed obligation of 75 to a hundred thousand dollars, and in order to operate into that town we began with practically nothing in and out of Oklahoma City, and yet our earnings in and out of Oklahoma City in November, 1917, had climbed up to \$37,000. Now, those earnings were obtained by our having solicitors throughout the southeastern part of the United States, so that business in and out of Oklahoma City would be routed into Fort Smith, if you please, over the Iron Mountain, and then taken by us into Oklahoma City. Now, if those solicitors were all withdrawn, maybe the business would all disappear.

Senator UNDERWOOD. I mean by that, of course, if that exception was made, it would leave your road to operate independently of this order entirely. You could maintain your solicitors and operate your road as you have.

Mr. DUSTIN. We would be entirely content, if that were considered feasible.

Senator UNDERWOOD. Then, any roads of that kind, if the discretion was left to the President to exempt them from this order, and allow them to stand on the same basis, where the roads were of that character that they did not interfere with the great movement of traffic in this country, you would think that would be satisfactory to the roads?

Mr. DUSTIN. It would be satisfactory to us.

Senator CUMMINS. The President has that power now.

Senator UNDERWOOD. It must be a way out, if we allowed that exemption, instead of providing for taking them all over.

Mr. THOM. While that matter is under consideration, I would like to make this suggestion as generally applicable, and that is that the

problem of the railroads is a very different one in managing those properties, in competition with the Government-operated railroads, than it was in operating them in competition with individually operated railroads.

Senator CUMMINS. I think that is perfectly plain. Will you point out again where you desire your amendment to be inserted?

Mr. DUSTIN. At the top of page 3 of the bill, after the words "standard return" in line 1.

Senator CUMMINS. Then, if your amendment were put in at that point, it would mean this: That any road which did not voluntarily agree with the President could resort to the courts for the ascertainment of the compensation, and in the meanwhile the United States should pay the guaranteed net income or advances to the guaranteed net income in such road?

Mr. DUSTIN. No; it would mean that the railroad operating officials would be permitted to retain the amount that they collected up to the extent that the President decided was proper.

Senator CUMMINS. You are thinking of it with reference to your road alone. Now, section 2 of the bill, in which your proposed amendment is to be inserted, begins: "That if no such agreement is made." That is to say, if the road instead of making an agreement with the United States to furnish compensation resorts to the lawful procedure for ascertaining the compensation, that then the President can allow that road to retain all of the earnings—net earnings that it makes?

Mr. DUSTIN. Yes; that is what it means.

Senator CUMMINS. And that would be true of all railroads?

Mr. DUSTIN. Any railroad that felt that the average return was not compensatory could, unquestionably, under this amendment ask the President to determine that—whether the 90 per cent was—

Senator CUMMINS. Now, I agree with you that the standard that is set up here is an utterly impossible one, as applied to all of the railroads of the United States, but the correction or modification of that would practically give to the President the right to agree with every railroad that it should retain its guaranteed net earnings.

Mr. DUSTIN. It would amount to that.

Mr. THOM. During the period, Senator, of the contest.

Senator CUMMINS. During the period of the contest; yes. We all know that that period will be probably somewhat prolonged, and inasmuch as it is on us to ascertain, in a legal way, the just compensation to be paid to any railroad, and if all the railroads of the country chose to adopt that plan, then the result would be simply that the railroads would retain their guaranteed net earnings.

Mr. DUSTIN. If the President decided that that is what they ought to do during the interval of their operations, yes.

Senator CUMMINS. And that practically means that we give the President no guide at all. That is for him to determine in each case, whether the standard that we propose in the bill affords just compensation, and if it does not, that then each road takes its net earnings.

Mr. DUSTIN. That in one sense, yes; but it provides that in special cases, where such standard return is found by the President not to be compensatory, then he may give the other standard. If

any road appealed to the President it would be up to the railroad to establish the fact that the average fixed by the standard was not compensatory, and then the President would make the necessary order.

Senator CUMMINS. That is true, but, after all, the whole matter is simply turned over to the President, with authority to fix whatever just compensation he believes ought to be awarded, limited only by the guaranteed net earnings.

Mr. DUSTIN. That is right, but it seems to me that something must be done to take care of these small railroads. For instance, we have receivers' certificates and interest on them. We are paying for equipment and we have no credit. We can get along all right, if the Government don't take our revenue, but if it takes all of it—a year ago we only had \$80,000 in the year, and in the last three months of this year we earned \$150,000 net. We have been putting in a lot of money to put our property in shape to operate. We would be very glad to be let alone. We can not be let alone. Our equipment is going to be sent on to other railroads, and their equipment on to our road. Traffic is going to be routed across the country on our line. Our line is a cross-country line and bound to get some of that cross-country traffic which formerly it did not get at all.

Senator TOWNSEND. Could you get along and do business if your traffic was confined entirely to that which originated on the line?

Mr. DUSTIN. No.

Senator TOWNSEND. Under this plan, if all the railroads were put under Government control, the outside business might be diverted from you?

Mr. DUSTIN. I hardly think so. You see, we are relieving congestion on the Frisco to-day at the rate of a good many cars a day, and I think the shippers would protest, because we are a cross-country line and are doing a good deal of business.

Senator POINDEXTER. The probability would be that there would be more business on your line than there is now, would it not?

Mr. DUSTIN. I can not tell you. It might be so. I do not understand that this amendment of mine interferes in any respect with the operation of the subsequent sections of the bill, which, as I understand it, give to the Government on the one side, as well as the railroads on the other side, to determine through the Court of Claims what is a just compensation, and if the railroad has been awarded more in this preliminary way than it is entitled to, it is to pay it back with 6 per cent; and if, on the other hand, it has been awarded less, it will get it back, with 6 per cent.

Senator CUMMINS. So far as I am concerned, I am very much obliged to you for pointing out that this standard would be very unjust to a great many railroads in the country and would be equally unjust to the public with regard to many others.

The CHAIRMAN. Are there any further questions that any member desires to ask?

Senator GORE. You stated that the freight originating on the Iron Mountain goes over your tracks into Oklahoma City by way of Fort Smith and other points along the line. Now, there is no competition between Fort Smith—between the Fort Smith & Western, which you represent there, and the Iron Mountain?

Mr. DUSTIN. None whatever.

Senator GORE. It occurs to me if the Government would even encourage traffic arrangements of that sort, it would facilitate the transportation service of that country and might be good for your road. Then you could take the freight that would originate in that territory and bring it into Fort Smith and into Oklahoma City. I would like to have your view on that point, generally speaking.

Mr. DUSTIN. Well, I am not, Senator, a practical railroad man. My profession is that of an attorney, and it was in an unguarded moment that I financed a railroad, and what little I have learned has been the financial line, in providing the sinews of war rather than the operation of the property.

Senator GORE. It has occurred to me that there are a great many instances like your road and the Iron Mountain, where the Government supervises traffic arrangements, that it would facilitate the service.

Mr. DUSTIN. I have given the matter some thought, but my opinion would not be anything like as good as that which could be given by practical railroad men who are here.

Senator KELLOGG. Mr. Dustin, as near as I can recollect from hearing your amendment read once, the effect would be that if any railroad company declined to accept the guaranty of the average three years' earnings ending June 30, 1917, the President might permit it to receive not 90 per cent of such amount but all of its current earnings—any road—it doesn't make any difference whether it was a poor road or a rich one.

Mr. DUSTIN. Yes; you would have to depend on the honesty and fairness of the President to interpret the bill in the spirit in which it is drafted.

Senator KELLOGG. Yes; that is what I thought.

The CHAIRMAN. Are there any further questions? If not, Mr. Dustin will be excused.

Mr. Thom?

Mr. THOM. I will call Mr. Shriver.

Senator ROBINSON. Mr. Chairman, it is now 10 minutes until the Senate meets, and I suggest that we ought to standardize our hearings a little bit. I think it will be necessary to take a recess until 2. I suggest that we meet regularly hereafter from 10 to 12 and recess until 2 and then continue from 2 until 5.

Senator KELLOGG. That is satisfactory to me.

Senator ROBINSON. So that there will be a sort of an understanding as to the hours which the committee will sit, and we can arrange our other engagements accordingly. I suppose every Senator has a multiplicity of other matters that require some attention.

The CHAIRMAN. I think it is a good suggestion that we have some definite time to meet and some definite time to recess and adjourn over, and the hours that have been indicated by the Senator from Arkansas seem to me to be adequate. You have heard the motion.

(The motion was agreed to.)

The CHAIRMAN. It is ordered that we run continuously now until we dispose of this matter from 10 to 12 and recess until 2, and then we run from 2 to 5, and we automatically close at 5.

The committee now stands at recess until 2 o'clock.

(The committee accordingly took a recess until 2 o'clock p. m. to-day.)

AFTER RECESS.

2 O'CLOCK P. M.

The committee reassembled at the expiration of the recess.

The CHAIRMAN. The committee will come to order. Mr. Thom, who is the next witness?

Mr. THOM. Mr. Shriver, vice president of the Baltimore & Ohio Railroad.

STATEMENT OF GEORGE M. SHRIVER, VICE PRESIDENT BALTIMORE & OHIO RAILROAD CO., BALTIMORE, MD.

The CHAIRMAN. Mr. Shriver, will you give to the stenographer your name, address and official connection with the road?

Mr. SHRIVER. George M. Shriver, Baltimore; vice president of the Baltimore & Ohio Railroad Co., in charge of the accounting, treasury, claim, relief, and purchasing departments.

The CHAIRMAN. Now, Mr. Shriver, we have before us this bill, the purport with which you are familiar, and we will allow you to address yourself to the features that you are most interested in.

Mr. SHRIVER. I have some copies of tabulations which I will refer to, in case the members of the committee care to have them before them. I appear before the committee in behalf of the eastern railroad carriers.

EASTERN CARRIERS.

The carriers I present statistics for represent 60,380 miles out of the total in the United States of 230,906 miles, or about 25 per cent of the total mileage of the country. The eastern roads herein referred to are those roads the principal mileage of which is in the official classification territory and generally north of the Ohio River and east of the Mississippi River. In all there are something over 100 eastern roads reporting to the Interstate Commerce Commission, but for the purposes of this presentation, affiliated railroads are grouped and comprise 38 systems, and in stating the results of operation intercorporate payments are eliminated. That is, dividends paid from one road to another are eliminated. So the net result is as if there were but 38 separate corporations.

The CHAIRMAN. And this applies to the specific operations of the individual corporations?

Mr. SHRIVER. Yes, sir; consequently the figures that I may give are not directly comparable with the statements which will be submitted for the roads in the eastern, western, and southern districts, which presentation gives the individual carrier and follows the district grouping of the Interstate Commerce Commission. The principal difference in these groupings is the fact that in the compilations I will present of the 38 eastern systems the Chesapeake & Ohio and Norfolk & Western roads, which are recognized by the Interstate Commerce Commission classification as being in the southern district, are included, and the reason for that is that these roads are the group where the rates generally are made in accordance with each other, and it is the group on which the rate basis is made. Now, the reason

it seemed to me desirable for presenting a district compilation, as against one for the entire United States, in this instance is the fact that you can not take any one year of the entire country and find it representative of the conditions of the roads in the country throughout.

In other words, in a particular year you will find that in the eastern district, for instance, it has been a prosperous period, when in the western or southern districts, because of local conditions, there is a difference in the results, and it has frequently been the case that the roads in one section of the country were prosperous at a time when the roads in the other section were not. That has been particularly the case in the last two or three years, with, as you all know, the pressure of traffic in this eastern district, which may be termed the center of the manufacturing interests in connection with the war industries, has brought into this section a large number of cars, which have been detained a great while; and, consequently, these eastern carriers have been congested and their operations have been more difficult and expensive. I have not checked up the operating figures sufficiently to testify finally on that, but my belief is that the eastern carriers in the past two or three years have had expenses greater in proportion to the whole country, and also have been called upon to pay in the adjustments between the sections and between the roads, a greater proportion of the car hire. The car hire, for instance, as I recall, three years ago, showed a debit against the eastern territory of \$17,000,000, about, as compared with \$34,000,000 in the last year.

BASIS OF DATA.

The figures herein submitted are based upon the exhibits of these carriers in the so-called Five Per Cent and Fifteen Per Cent Rate Cases, and as to which the commission said in its opinion in the Five Per Cent Case (31 I. C. C., 350, p. 360, 1914): "The substantial accuracy of these figures was not questioned"; and in the Fifteen Per Cent Case (I. C. C., 303, p. 317, 1917), the commission said: "All these statistical exhibits introduced by carriers and protestants have been carefully checked, just as far as checking was possible, from the annual and other periodical and special reports filed with us by the carriers. There can be no question regarding the fundamental accuracy of the statistical summaries upon which we have primarily relied in this respect." It is proper to say in that connection that in their report the commission stated that they did not mean by this statement to indorse the facts as to the property investment. That is, as to its value. They simply stated it as to the correctness of the compilations from the carriers' accounts.

The exhibit which I will present discloses the property investment of the carriers, the net operating income, and the percentage of return from the investment in question.

PROPERTY INVESTMENT.

Property investment, as we have treated it, is a summary of those items in the balance sheet, representing the cost of road, equipment, and other physical property used in the transportation service of the carrier and producing the net operating income. It does not include

material, supplies, and working capital. These items involve an additional large sum of money, which is not included as property investment, but is required in the operation of these roads, in the carrying of materials on hand, the agents' accounts and the working capital needed in the conduct of the business generally.

Senator WATSON. Under what head do you carry that?

Mr. SHRIVER. Well, it has been eliminated from these compilations for the reason that it is a rather difficult item to get. That is, there are debits and credits in the account, in order to get the current assets in excess of current liabilities which constitutes the working capital, and finding it somewhat difficult to get that exact figure, in considering these questions we have eliminated working capital in making up the property investment and the calculations and percentages do not reflect any return on this capital.

Senator ROBINSON. Do you mean to say it should be added to the property values if it could be ascertained correctly?

Mr. SHRIVER. Yes, Senator; and I might say that upon the Baltimore & Ohio Railroad Co. the property investment is approximately \$559,000,000. Our working capital in addition to that is between \$20,000,000 and \$25,000,000; that gives you some idea of the relation working capital bears to the property investments. Further, the property investment as herein stated does not include outside investments of these companies. If they happen to be in the coal business or any other business not directly contributing to these earnings, that is eliminated. For instance, in compiling the statement for the Baltimore & Ohio Co., we have \$3,000,000 of real estate. We found that \$1,500,000 of that has been purchased for a specific railroad improvement; that is included in the "Property investment" and the remainder is not included.

NET OPERATING INCOME.

The net operating income as used herein is the amount of the gross revenues derived from the operation of these properties utilized in the conduct of the carriers' transportation service, remaining after charging against said revenues all operating expenses—including charges for maintenance, renewals, and depreciation, taxes on the property used in the service or the revenues or income therefrom, and after debiting or crediting the net amount of hire of equipment and joint facilities and miscellaneous rents—(I would state that in some instances the roads are taxed on their gross receipts, so that while a tax on their property used in transportation it is apparently a tax on income. It is an indirect way some of the States have of taxing the property, by taxing it on gross receipts, or on some basis built up on the receipts, but is in fact a property tax). Also after charging the income taxes, so far as they have been chargeable in past years, and after debiting and crediting the net amount of hire of equipment and joint facilities, and miscellaneous rents, but not rent of leased lines; in other words, the net income applicable to the payment of rentals upon leased lines and what with the income from other sources constitute the net corporate income applicable to the payment of interest, dividends, and for surplus.

The operating income, as I have stated, is substantially in accord with the suggestions in the act, although it would not be exactly, nor

would the compilations that have been made by the carriers heretofore, exactly accord with the basis proposed in the act. There is one item which the act suggests the elimination of—miscellaneous rents—which is included in these compilations as a charge, so they are not exactly comparable.

Senator LA FOLLETTE. How important is that in amount?

Mr. SHRIVER. Comparatively unimportant. I think possibly something like \$13,000,000. It is a debit and credit account, and final result is immaterial either one way or the other. That sounds rather crude probably to refer to \$13,000,000 as not material, but it is, when you consider the size of these figures. I am afraid one of the difficulties the railroads have had has been the magnitude of the figures, and a fraction of a per cent, apparently unimportant, may play an important part in the final result to individual treasuries.

BASIS OF COMPENSATION.

The President, by proclamation, took possession and assumed control—I am simply quoting the proclamation, not undertaking to determine the legal point—over the transportation system of these carriers, at 12 o'clock noon on the 28th day of December, 1917, but for the purposes of accounting such possession and control is to date from 12 o'clock midnight on December 31, 1917, and I call particular attention to that date—December 31, 1917.

The suggested method of compensation is through a guarantee to the carrier that during the period of Federal control it shall receive as its just compensation an income at an annual rate equivalent, as nearly as may be, to its average net railway operating income for the three years ending June 30, 1917, computed as to carriers making returns to the Interstate Commerce Commission from such returns, excluding, however, debits and credits arising from the accounts called in the monthly returns "Leased road rents" and "Miscellaneous rents."

RETURN ON PROPERTY INVESTMENT.

In its report in the Five Per Cent Case the commission stated with respect to the operating income in relation to property investment:

The carriers while exhibiting their returns in net corporate income have very properly placed greater dependence upon the net operating income as the measure of the sufficiency of their returns; and we shall use the net operating income of these carriers as the price of transportation rates that should be examined in order to determine, so far as we may, the adequacy and tendency of their revenues.

Mr. Shriver submitted statement showing the property investment and return for the 38 systems, and asked that it be inserted in the record, marked "Shriver Exhibit A."

The statement submitted, marked "Shriver Exhibit A," shows the net operating income of the 38 systems combined. The names of the 38 systems referred to are listed in the second tabulation submitted. It shows the 38 systems combined for the years June 30, 1903, to 1917, inclusive, in relation to the property investment and the percentage of returns. There is also shown the net operating income averaged for the years to June 30, 1915, 1916, and 1917 in relation to the average property investment for the same years and in relation to the property investment of June 30, 1917, and in relation to

the estimated property investment at December 31, 1917, the last being partly estimated.

We have received returns, I think, from about 85 per cent of these roads, as to the increase in their property since June 30, 1917, and have estimated a small amount, representing the roads that did not report that item.

It is of common knowledge, but it may be well before considering the percentage return on the property investment, to call attention to the fact that it takes \$5 of railroad investment to produce \$1 of earnings. That is to say, the annual gross operating earnings of the road is only one-fifth of the property investment involved in producing it; or, stated in another way, it is 20 cents of product annually for \$1 of capital, and this compares, according to the Census of Manufactures for 1909, with bituminous coal mining, 40 cents per \$1. That is to say, the bituminous coal mining produced \$2 gross revenue for each \$1 of capital. Anthracite mining, 60 cents; packing-house products, \$3.39; milling, \$2.48; oil refining, \$1.30; cotton manufacturing, 56 cents; woolen manufacturing, 98 cents; automobile manufacturing, \$1.32; glass furnaces, 80 cents; rolling mills, 37 cents; canning and preserving, \$1.33. In other words, the turnover of capital with the railroad is very much less than any other industry in the country.

That vast sums should have been invested in the carriers' bonds, bearing interest averaging but 4½ per cent, in an enterprise producing such small gross revenues compared with invested capital could only have been because of the feeling of an assured income, while investments in stock of the enterprise was no doubt in the expectation generally of a reasonable return, and that with the development of the country and the growth of business there would not only be fair but liberal returns.

Now, if you will glance at this tabulation, it shows the return that these roads have had on their property investment, from the results of the operating of their railroad properties, as follows:

SHRIVER EXHIBIT A.

Property investment, net operating income, and rate of return combined 38 systems.

Fiscal year.	Property investment.	Net operating income.	Rate of return.
1903.....	\$4,460,460,311	\$251,332,065	5.63
1904.....	4,599,134,582	244,654,734	5.32
1905.....	4,789,302,878	266,880,079	5.57
1906.....	5,016,827,089	305,073,065	6.08
1907.....	5,296,796,951	318,925,611	6.02
1908.....	5,466,992,058	275,665,826	5.04
1909.....	5,555,912,661	296,006,015	5.33
1910.....	5,828,737,319	352,658,176	6.05
1911.....	6,151,733,755	310,490,963	5.05
1912.....	6,305,907,004	316,316,092	5.02
1913.....	6,501,134,708	337,474,829	5.19
1914.....	6,714,375,811	260,544,036	3.88
1915.....	6,804,482,894	295,998,383	4.34
1916.....	6,916,117,918	451,457,424	6.53
1917.....	7,116,424,426	406,461,566	5.71
Three years' average, 1915-1917.....	6,950,412,492	384,840,150	5.54
Three years' average for net operating income property investment:			
1917.....	7,116,424,426	384,840,150	5.41
Dec. 31, 1917 (estimated).....	7,226,424,426	384,840,150	5.33

The return in each year in relation to the average return is shown graphically in chart, Exhibit A, attached.

The property investment—that is, the average of the property in service during the three years 1915, 1916, and 1917, was \$6,950,412,000, and on that there was a return of \$384,840,150, or 5.54 per cent. When we come to June 30, 1917, the entire property investment at that date was \$7,116,424,426, and the average earnings for the three years—\$384,840,000—affords a return on that property of 5.41 per cent. When we add to that the additional investment between June 30, 1917, and December 31, 1917, we have a total property investment of \$7,226,424,426, and the same three-year average operating income gives a return of but 5.33 per cent on the total property at December 31, 1917.

Senator WATSON. How do you happen to get the same net operating income there exactly each year?

Mr. SHRIVER. That is the average net operating income in dollars for the three-year period to June 30, 1917, and is the sum, as I understand it, which the carriers would receive each year thereafter during Federal operation, and based on the property at December 31, 1917, it gives a return of 5.33 per cent.

Senator KELLOGG. Let me see if I understand that. That is, assuming that the earnings for the calendar year be the same as the earnings for the fiscal year ending June 30, 1916?

Mr. SHRIVER. No; if I may restate it, I intended to say if we take the period which has been suggested in the bill we find that the average earning in dollars and cents is \$384,840,000. Now, we would understand from that that the revenue of these carriers, if it were guaranteed to them, would continue on that basis, regardless of their property investment.

Senator ROBINSON. That is, assuming that the net operating railway income of all the carriers embraced in this classification was the same?

Mr. SHRIVER. Well, they would be the same if the amount was fixed under the act. The act purposes to not let you have a fluctuating revenue but a fixed revenue, and that fixed revenue for these 38 systems, as I estimate it, is \$384,840,000 and would continue whether it would be one year, two years, or three years, except under the suggestion that there would be a reasonable allowance for interest on property which may be added from January 1, 1918. There is a twilight zone between June 30 and December 31, 1917, and no allowance provided for interest on property added in that period.

The CHAIRMAN. Up to the time that you will have, if this bill becomes law, a fixed income; it would be on the average property investment of \$6,950,412,000 there in your first item, on which the income would be \$384,840,150. Now, your new property investments for 1917, running up to December 31, would raise that to over seven billion, but you would still have the same income under the operation of this law.

Mr. SHRIVER. And your return would be reduced.

The CHAIRMAN. Would be reduced in the percentage, and when you got to December 31, 1917, it is reduced to 5.33.

Mr. SHRIVER. Reduced to 5.33, and I think that is probably one of the most important figures in the whole proposition, because you will see that the return on the three-year average was 5.54 per cent, and you might assume that you were granting these carriers for the

future a return on their investment of 5.54 per cent, whereas, as a matter of fact, when you take the income which produces 5.54 per cent on the average property and apply against the property at December 31, 1917, you get not 5.54 per cent but 5.33 per cent as the future return.

The CHAIRMAN. But does not the bill provide that if, after the assumption of possession by the Government, additional investments are made in the roads that are accepted by the supervision of the Government, that you are allowed a return on that if approved by the Government?

Mr. SHRIVER. That would be as to additional property. That is, if we made this \$7,300,000,000 you would get an increased revenue comparable to the cost of the money on that \$100,000,000, but the carrier would receive nothing on the increase between the \$6,900,000,000 and the \$7,228,000,000.

Senator CUMMINS. I understand what these figures mean is this: We took possession on the 31st of December and we took possession of property which, according to the books of the railroad company, was worth or represented an investment of \$7,226,424,426, and that the compensation we propose to pay on that would be 5.33 per cent.

Mr. SHRIVER. That is exactly the proposition, as I understand it, Senator.

Mr. THOM. I think, Mr. Chairman, in order to get that matter well in mind, as we go on, this figure which the witness has given here is dealing with the property investment account, and at the time the roads were taken over, and deals only with the additions to property in the past, and up to December 31, which represents the figures that Senator Cummins has just read. Now, that is to be clearly distinguished from any additions to the investment after the Government takes control. The witness is dealing only with the status as existing on the 31st day of December, 1917.

Mr. SHRIVER. And only the latter with respect to this one item on Exhibit A, where this additional capital to December 31 is estimated, and the return is shown as 5.33, the other statistics are based on the property at June 30, 1917. I have not had time to secure in detail for each road the figure up to December 31, 1917, so the tabulations submitted, showing the returns of each of these individual roads, is based on the property at June 30, 1917.

Mr. THOM. I will ask for that tabulation to be inserted in the testimony at this point.

The CHAIRMAN. That will be done.

SHRIVER EXHIBIT B.—Thirty-eight systems—Eastern district.

Road.	Net operating income.			Property investment.			Rate of return.			Num-ber years elap-sing 3-year aver-age.
	1915	1916	1917	Average 3 years.	1915	1916	1917	Average 3 years.	3-year average rate of return compared with yearly rates of return during the 15 years 1903 to 1917 was less than the yearly rate increase.	
Ann Arbor.....	\$479,023	\$604,981	\$452,985	\$537,346	\$17,319,272	\$17,374,337	\$17,620,864	\$17,404,824	1903, 1905, 1906, 1907, 1910, 1912, 1916.	5
Baltimore & Ohio.....	23,472,319	27,426,938	26,183,202	25,664,153	545,048,471	535,374,756	567,845,511	555,422,913	1903, 1904, 1905, 1906, 1907, 1909, 1910, 1912, 1916.	9
Bessemer & Lake Erie	3,972,683	5,441,923	4,821,025	4,745,211	43,630,302	44,913,295	51,000,776	46,221,458	1910, 1916.	2
Boston & Maine.....	7,714,797	11,988,028	9,757,344	9,820,056	203,340,585	203,486,288	205,089,121	204,475,331	1903, 1905, 1906, 1907, 1909, 1910, 1916.	7
Bu'alo & Susquehanna	274,646	687,968	741,548	568,054	17,763,380	19,671,828	10,631,234	13,022,151	1903, 1904, 1905, 1916, 1917.	5
Buffalo, Rochester & Pittsburgh.	2,631,660	3,679,019	3,514,823	3,275,157	56,287,958	56,413,113	57,210,215	56,637,085	1903, 1904, 1905, 1906, 1907, 1908, 1909, 1910, 1911, 1912, 1913, 1914, 1916, 1917.	14
Central New England.	1,171,594	1,780,121	1,558,255	1,469,320	28,099,924	26,204,018	26,688,225	26,380,723	1912, 1913, 1916, 1917.	4
Central Railroad of New Jersey.	8,465,366	10,201,224	10,026,686	9,565,428	98,923,243	101,304,921	106,166,983	102,131,349	1903, 1904, 1905, 1906, 1907, 1908, 1909, 1910, 1911, 1912, 1913, 1916, 1917.	13
Chesapeake & Ohio.....	9,901,861	14,289,639	15,632,737	13,268,096	226,578,932	229,246,163	238,866,800	231,533,932	1910, 1915, 1917.	3
Chicago, Indianapolis & Louisville.	1,070,589	1,776,119	2,046,799	1,632,252	39,595,969	39,637,913	40,541,663	39,925,178	1903, 1904, 1906, 1909, 1907, 1910, 1916, 1917.	8
Chicago, Terre Haute & Southeastern.	673,297	865,636	1,255,063	931,342	24,948,752	24,927,762	24,707,269	24,861,261	1903, 1904, 1905, 1917.	4
Cincinnati, Hamilton & Dayton.	145,919	1,489,463	1,130,683	887,876	56,080,776	40,072,159	41,208,648	45,770,528	1903, 1904, 1905, 1906, 1907, 1910, 1911, 1912, 1913, 1916, 1917.	10
Cincinnati, Indianapo- lis & Western.	.....	136,860	537,142	428,700	.....	14,208,683	14,197,466	14,262,240	1903, 1904, 1905, 1906, 1907, 1910, 1911, 1912, 1916, 1917.	1
Coal & Coke.....	288,021	285,854	269,879	281,251	8,094,667	8,203,116	8,315,625	8,204,469	1904, 1911, 1912, 1913, 1914, 1915, 1916.	7
Delaware & Hudson...	7,638,076	8,767,697	6,752,669	7,718,824	110,389,108	111,534,638	116,221,171	112,705,072	1903, 1904, 1905, 1906, 1907, 1908, 1909, 1910, 1911, 1912, 1913, 1914, 1915, 1916.	14

* Seven months.

† Deficiency.

SHRIVER EXHIBIT B.—Thirty-eight systems—Eastern district—Continued.

Road.	Net operating income.			Property investment.			Rate of return.			3-year average rate of return compared with yearly rates of return during the 15 years 1903 to 1917 was less than the yearly rate increase.	Number years exceeding 3-year average.			
	1915	1916	1917	Average 3 years.	1915	1916	1917	Average 3 years.	1915			1916	1917	
Delaware, Lackawanna & Western.	\$13,987,096	\$17,339,668	\$16,661,183	\$15,989,316	\$188,447,134	\$203,571,960	\$208,964,671	\$200,327,922	7.98	7.41	8.52	7.97	1903, 1904, 1905, 1906, 1907, 1908, 1909, 1910, 1916.	9
Detroit & Mackinac.	261,356	355,103	338,498	311,649	6,460,228	6,504,778	6,542,943	6,502,650	4.79	4.06	5.15	5.17	1903, 1904, 1905, 1907, 1908, 1909, 1910, 1911, 1913, 1914, 1916, 1917.	12
Detroit, Toledo & Iron- ton.	1,67,518	369,646	283,957	238,685	21,145,010	21,668,497	22,537,370	21,900,290	.96	(1)	1.84	1.30	1903, 1906, 1907, 1916, 1917.	5
Erie.	13,953,689	22,941,912	13,727,951	16,574,521	469,838,958	471,936,015	475,965,049	472,576,960	3.57	2.97	4.86	2.88	1903, 1904, 1906, 1907, 1910, 1911, 1916.	7
Hocking Valley.	1,781,688	2,846,828	3,375,535	2,668,017	43,017,756	43,108,801	45,737,807	43,964,788	6.07	4.14	6.60	7.38	1903, 1906, 1907, 1910, 1917.	9
Lehigh & Hudson River.	417,145	633,006	536,792	526,314	6,076,515	6,947,585	6,315,451	6,213,194	8.45	6.86	10.13	8.33	1916.	1
Lehigh & New England.	1,036,577	1,247,617	1,178,876	1,154,357	12,063,894	13,166,829	12,400,964	12,883,992	8.96	8.33	9.48	8.80	1903, 1906, 1907, 1908, 1909, 1910, 1911, 1912, 1913, 1914, 1915, 1916.	1
Lehigh Valley.	10,366,856	11,046,280	10,164,666	10,535,054	186,971,081	192,805,768	201,339,391	186,705,413	5.43	5.56	5.73	5.05	1903, 1914, 1915, 1916.	13
Maine Central.	2,509,515	3,099,391	3,238,655	2,949,157	57,304,334	57,551,763	58,290,026	57,725,374	5.11	4.38	5.39	5.56	1903, 1907, 1910, 1916, 1917.	5
New York Central.	63,881,615	110,040,629	98,960,602	90,267,615	1,446,224,738	1,496,703,757	1,498,875,941	1,468,611,579	6.15	4.42	7.03	6.40	1903, 1907, 1910, 1911, 1912, 1913, 1914, 1915, 1916.	2
New York, New Haven & Hartford.	15,973,834	17,562,802	18,482,232	17,349,613	272,375,888	271,671,351	275,915,110	272,657,116	6.36	5.86	6.48	6.75	1903, 1907, 1910, 1911, 1912, 1913, 1914, 1915, 1916.	7
New York, Ontario & Western.	1,885,633	2,264,677	2,149,397	2,096,909	88,092,382	88,776,620	88,766,472	88,545,158	2.37	2.14	2.55	2.42	1903, 1906, 1907, 1908, 1909, 1910, 1911, 1913, 1916, 1917.	10
Norfolk & Western.	14,404,489	24,101,201	24,250,809	20,918,530	244,734,925	249,098,522	254,541,557	249,457,660	8.39	5.99	9.68	9.53	1916, 1917.	2
Pennsylvania.	63,440,357	103,489,749	88,787,507	85,236,201	1,465,734,682	1,507,857,127	1,557,475,713	1,510,355,174	5.64	4.33	6.86	5.70	1903, 1904, 1905, 1906, 1907, 1908, 1909, 1910, 1916, 1917.	10
Pere Marquette.	2,735,876	4,683,135	3,957,544	3,758,688	91,500,206	91,446,091	91,910,354	91,618,914	4.10	2.99	5.12	4.20	1903, 1904, 1916, 1917.	4
Pittsburgh & West Vir- ginia.	127,383	391,462	391,462	303,136	55,812,083	55,877,150	55,865,461	55,865,461	.54	.70	.70	.54	1906, 1907, 1908, 1916.	4
Reading.	15,226,450	23,030,452	22,011,201	20,089,369	225,677,917	227,733,496	231,338,888	228,266,767	8.80	6.76	10.11	9.51	1903, 1906, 1907, 1910, 1913, 1916, 1917.	7
Rutland.	821,310	1,134,256	1,132,371	1,029,289	21,506,530	21,547,293	22,312,403	21,798,499	4.72	3.62	6.26	6.07	1916, 1917.	2

Mr. SHRIVER. The suggested method of compensation contemplates giving each carrier the net operating income averaged for the three years ending June 30, 1915, 1916, and 1917. So far as the 38 eastern railroad systems are concerned, the year ending June 30, 1915, was, with the one exception, 1914, the worst year that the eastern railroads had in the last 18 years. That is, it was the worst year on the basis of returns received on their property. The net operating income of 1915 of the entire 38 systems was \$296,000,000, and was less than the net operating income of the years 1906, 1907, 1909, 1910, 1911, 1912, and 1913. That is, the dollars and cents earned that year were less than the dollars and cents earned in each of those previous years, notwithstanding since 1906 there has been an increase in investment of over \$1,790,000,000. The return on the investment for the year ending June 30, 1915, was only 4.34 per cent, which is less than the return in any, except 1914, in the last 18 years.

The year ending June 30, 1916, was the first really good year that the eastern railroads had had since 1910. It was not only the year of largest operating revenues, but was also the year of the largest net operating income and the return on property investment was 6.53 per cent, or the highest in any of the 18 years.

Reference has frequently been made to 1916 as an extraordinarily prosperous year for the railroads. It should be recalled in this connection that between 1913, the previous peak year in business, and 1916 these carriers had added more than \$500,000,000 to their property investment, and so were enabled, when traffic offered in 1916, to handle about 12 per cent more business than in 1913, and as was demonstrated in 1917, were capable of performing an even larger service. The returns for 1916, therefore, would seem to represent the fair earning value of the plant. That is, 1916 was a year in which the railroads had an opportunity to avail of their additional investment and use their property fully which they had provided for by adding \$500,000,000 to their capital, and they added that capital, because in the peak business of 1913 it was demonstrated that these carriers could not practically do any more business than they did in that year, and so the managements, generally, were most energetic in adding to their property, to expand and be prepared to meet the larger demands for business, which came to them in 1916.

The year ending June 30, 1917, showed a still further increase in operating revenues over 1916, but the still larger increase in operating expenses, due in part to severe weather conditions which prevailed in January, February, and March, but more particularly to the increases in the cost of labor, of fuel, and materials (offset in part only by increased rates), reduced the net operating income return of property investment to 5.71 per cent; so that it was less than the returns for the years 1906, 1907, 1910, and 1916, and very many of the eastern railroads showed a lower return than in many of the preceding years. For example, in the case of the Baltimore & Ohio Railroad System, the return in 1917 was lower than that of 1903, 1904, 1905, 1906, 1907, 1909, 1910, 1912, and 1916, and the returns for the Pennsylvania System were lower in 1917 than in any year from 1903 to 1910, inclusive, and of course lower than 1916. Now, these are the three years which have been taken for a fixing

base, and the results of these three years—the results of the operations of these three years produced a net operating income for the 38 systems amounting to \$384,840,150, and in relation to the average investment during the three years, a return of 5.54 per cent, or less than the returns for the years 1902, 1903, 1905, 1906, 1907, 1910, 1916, and 1917. In other words, the suggested basis of compensation, even if it were what it appeared to be, 5.54, instead of 5.33 was less than any one of those eight preceding years—eight of the fifteen preceding years.

The CHAIRMAN. Have you in your table an average of the years inclusive from 1903 to 1917—what would be the average?

Mr. SHRIVER. The detailed average; I have that; yes.

The CHAIRMAN. It might be well to put that in just at this time, to show what would be your average from 1903 to 1917.

Mr. SHRIVER. The average for the period of fifteen years is 5.36 per cent.

The CHAIRMAN. Three hundredths of one per cent above what we allow.

Mr. SHRIVER. As I have suggested, however, we should consider this return as related to the property at June 30, 1917, and at December 31, 1917. When related to the investment as of June 30, 1917, the returns afforded by the suggested guaranty is but 5.41 per cent, or less than the years 1903, 1905, 1906, 1907, 1910, 1916, and 1917, and when related to the investment at January 1, 1918, estimated, shows a return of but 5.33 per cent.

In this connection attention is called to the following comment by the Interstate Commerce Commission in its opinion in the Five Per Cent Case, 31 I. C. C. 371, 1914:

The ratio for 1913 is shown as 5.36 per cent. This is below the average for the entire period (1900 to 1913, inclusive), which was 5.64 per cent, and only slightly higher than the ratio for 1900, although the property investment during the period increased 59 per cent, while the operating revenues increased 110 per cent.

That is, the carriers had increased their property investment by 59 per cent. They had done a greater business by 110 per cent, but still had a less return on their property than 1900. The commission found, in 31 I. C. C., 384:

In view of a tendency toward a diminishing net operating income, as shown by the facts described, we are of opinion that the net operating income of the railroads in Official Classification Territory, taken as a whole, is smaller than is demanded in the interests of both the general public and the railroads.

I would not mean to infer that the commission's conclusion was based solely on the return of 5.36 per cent. That was simply one of the items before them. They had all of the data presented by the carriers, and such other information as they had available.

Senator CUMMINS. You are reading from the opinion of the commission on the rehearing of that case?

Mr. SHRIVER. That is the decision; yes, Senator—the rehearing.

Senator CUMMINS. In the fall of 1914.

Mr. SHRIVER. That expression was in the first decision and the commission quoted it in the second, as I recall. Exhibit B, which is before you, is a compilation showing the net operating income of the individual carriers averaged for the three years. The property investment averaged for the three years, and the rate of return that it

affords each of these several carriers. I do not suppose that it is necessary to read into the record the carriers that are covered in this tabulation. They are substantially the ones that Senator Cummins read yesterday, and if the statement is filed——

Senator ROBINSON. It goes in the record—the whole statement.

Mr. SHRIVER. Very good. The names appear on the exhibit. The second chart simply indicates the years in which the proposed compensation is higher or lower than the return actually earned in each year of the period 1903 to 1917. As I do not think we can deduct much from the individual carrier situation, I will not speak further on that, but will file it, marked "Shriver Exhibit C."

SHEIVER EXHIBIT C.
THIRTY-EIGHT SYSTEMS—EASTERN DISTRICT.

Net operating income rate of return on property investment compared with average rate of return three years 1915-1917 on property investment June 30, 1917.

Road.	Average rate of return 3 years, 1915-1917, on property investment June 30, 1917.	1903	1904	1905	1906	1907	1908	1909	1910	1911	1912	1913	1914	1915	1916	1917	Number of years in which rate of return was higher or lower than 3-year average of column a.
Ann Arbor.....	3.04	71.20	2.58	3.14	4.50	4.26	2.50	1.38	2.03	2.69	2.83	3.03	2.70	2.77	3.81	2.53	5 higher.
Baltimore & Ohio.....	4.52	5.51	5.09	5.44	6.22	6.11	4.16	4.91	5.21	4.50	4.76	4.52	3.83	4.31	4.96	4.61	10 lower.
Bessemer & Lake Erie.....	9.30	5.82	4.92	8.83	9.25	9.43	6.46	7.49	11.40	7.35	10.20	9.59	6.16	9.10	12.12	9.45	4 lower.
Boston & Maine.....	4.75	5.13	4.14	5.13	5.18	5.30	4.37	4.33	5.40	3.74	4.25	3.48	2.90	3.79	5.89	4.72	6 higher.
Buffalo & Susquehanna.....	5.34	6.75	5.05	5.31	4.35	3.99	1.11	1.66	.82	1.76	1.23	2.33	1.63	1.55	6.45	6.97	7 higher.
Buffalo, Rochester & Pittsburgh.....	5.73	10.50	9.56	8.99	9.14	9.01	6.30	6.37	7.39	7.78	7.70	8.29	6.27	4.08	6.53	6.14	8 lower.
Central New England.....	5.60	.67	.69	.03	.74	D 2.12	1.04	3.36	4.73	4.45	6.07	5.87	3.69	4.49	6.68	5.84	12 higher.
Central R. R. of New Jersey.....	9.09	10.36	12.98	13.74	13.77	13.64	11.81	11.18	11.88	11.91	10.37	11.18	8.87	8.66	10.07	9.45	1 lower.
Chesapeake & Ohio.....	5.55	1.93	4.08	4.03	5.66	4.68	4.51	5.28	6.13	4.50	5.12	4.45	4.33	4.37	6.22	6.54	11 higher.
Chicago, Indianapolis & Louisville.....	4.03	3.95	5.59	5.87	5.79	5.05	3.07	3.56	4.68	3.84	2.88	3.22	2.34	2.70	4.48	5.06	2 lower.
Chicago, Terre Haute & Southeastern.....	3.77	1.75	4.52	3.89	3.07	3.51	1.96	2.20	3.24	3.23	3.39	3.23	2.81	2.70	3.47	5.08	7 lower.
Cincinnati, Hamilton & Dayton.....	2.08	1.76	4.12	3.04	2.47	3.17	1.75	1.63	2.31	2.77	3.19	1.50	D 2.10	D .82	3.00	3.01	11 lower.
Cincinnati, Indianapolis & Western.....	3.00	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	3.78	3 lower.
Coal & Coke.....	3.38	1.63	3.87	1.85	2.01	1.42	1.07	2.53	2.91	8.61	4.01	5.09	3.97	3.56	.98	3.48	1 higher.
																3.25	8 lower.

Pennsylvania.....	5.47	7.49	6.90	7.28	7.84	7.78	6.78	6.58	7.41	5.03	5.03	5.48	4.48	4.33	6.86	5.70	13 higher.
Pere Marquette.....	4.09	4.59	4.11	2.45	2.04	3.76	2.65	3.20	3.72	1.31	1.39	2.06	D 3.50	2.99	5.12	4.30	2 lower.
Pittsburgh & West Virginia *	.54	.....	.....	.....	.60	1.26	.84	.11	.08	.05	.19	.....	.26	.23	.70	.....	11 higher.
Reading system.....	8.68	7.14	8.00	9.61	9.60	8.81	8.49	8.09	9.18	8.56	7.98	9.71	7.23	6.76	10.11	9.51	4 higher.
Rutland.....	4.61	1.08	3.32	3.89	3.81	3.72	3.35	3.49	4.27	4.09	3.79	3.23	3.57	3.83	5.26	5.07	7 higher.
Toledo, St. Louis & Western.....	1.91	2.06	2.22	2.21	2.87	3.23	1.90	2.09	2.21	1.69	1.60	2.14	1.69	.89	2.57	2.28	8 lower.
Wabash.....	2.87	2.65	2.89	1.79	3.58	3.74	1.90	2.58	3.08	2.43	1.09	2.09	1.12	1.23	3.59	3.93	10 higher.
Western Maryland.....	2.28	2.02	1.88	1.94	2.15	2.27	2.31	2.39	3.27	2.78	2.06	1.36	D .04	1.76	2.97	2.92	6 higher.
West Side Belt *	3.45	.83	.74	2.05	3.78	1.85	DL 26	.21	2.19	1.19	2.41	2.50	3.04	.91	4.73	.....	9 lower.
Wheeling & Lake Erie.....	2.13	1.64	1.71	1.46	2.38	2.96	1.60	1.71	2.64	2.48	2.53	1.64	2.27	1.08	3.22	.89	12 higher.
Average 38 systems.....	5.40	5.63	5.32	5.57	6.08	6.02	5.04	5.33	6.05	5.05	5.02	5.19	3.88	4.35	6.53	5.71	7 higher.
																	8 lower.

* New York Central includes Kanawha & Michigan, Dayton & Union, and New York, Chicago & St. Louis.

* 1917 figures not received.

It might cast some light on this, if you could have before you this chart showing graphically the trend of these carriers' returns for this period from 1900 to 1917. It indicates the yearly trend of return on property investment. These are also averaged in three-year periods. The chart which I will file is marked "Shriver Exhibit D."

Senator CUMMINS. That is simply putting in chart form the figures you have already given.

Mr. SHRIVER. Yes. The three-year average from 1915 to 1917, inclusive, is quite a good deal higher than the three-year average from 1912 to 1914, which included the peak year, 1913, which, while a peak in amount of business handled, was not high in the return to the railroads.

Senator POMERENE. Now, are you speaking of all these railroads?

Mr. SHRIVER. I am speaking of the 38 railroads. The return for the three years 1915-1917 has been referred to as being higher than the two preceeding three-year periods, but you will note is very little above the period 1909 to 1911 and is very much below the period from 1906 to 1908, inclusive.

Senator GORE. That is on the percentage return basis.

Mr. SHRIVER. On the percentage return basis. That is the return on their investment—to their property investment, proposed to be paid these carriers under the bill is lower than any three-year period excepting 1912-1914, and I might suggest that what the railroads have been engaged in since 1910 was in trying to bring that block up by increased rates so as to be more fairly remunerative. Now, when we take the 5.53 per cent which this suggested compensation makes, and which is shown in a red line below the actual three-year average—

The CHAIRMAN. You mean the 5.33 per cent?

Mr. SHRIVER. It should be 5.33 per cent. Thank you, Senator, for correcting me.

Senator GORE. Is that 1915, 1916, and 1917?

Mr. SHRIVER. The net operating income for the years 1915, 1916, and 1917, actually averaged, show a return of 5.54 per cent on the average property. When we take the additions to the property up to December 31, 1917, which is the period when the Federal control began, and relate to it the average income for the three years, then the return on that property is only 5.33 per cent.

Senator GORE. What was the new factor introduced to reduce it?

Mr. SHRIVER. Increased investments.

Senator GORE. During the fiscal year?

Mr. THOM. From June 30, 1917, to December 31, 1917, new investment. When you add that, it reduces the percentages.

Mr. SHRIVER. It is more than that, because when you take the property for the three years and averaged it, you do not get the property value that you had at June 30, 1917, even. It is much below the property at June 30, as I will show in a few moments. What I mean you begin with the properties that were utilized in 1915, then we added something to it in 1916, and we added something to it in 1917, so that you are constantly building up a property, and when you average the three years you do not get the real amount of property in use at June 30, 1917, though that, as well as the actual increase

It might cast some light on this, if you could have before you this chart showing graphically the trend of these carriers' returns for this period from 1900 to 1917. It indicates the yearly trend of return on property investment. These are also averaged in three-year periods. The chart which I will file is marked "Shriver Exhibit D."

Senator CUMMINS. That is simply putting in chart form the figures you have already given.

Mr. SHRIVER. Yes. The three-year average from 1915 to 1917, inclusive, is quite a good deal higher than the three-year average from 1912 to 1914, which included the peak year, 1913, which, while a peak in amount of business handled, was not high in the return to the railroads.

Senator POMERENE. Now, are you speaking of all these railroads?

Mr. SHRIVER. I am speaking of the 38 railroads. The return for the three years 1915-1917 has been referred to as being higher than the two preceeding three-year periods, but you will note is very little above the period 1909 to 1911 and is very much below the period from 1906 to 1908, inclusive.

Senator GORE. That is on the percentage return basis.

Mr. SHRIVER. On the percentage return basis. That is the return on their investment—to their property investment, proposed to be paid these carriers under the bill is lower than any three-year period excepting 1912-1914, and I might suggest that what the railroads have been engaged in since 1910 was in trying to bring that block up by increased rates so as to be more fairly remunerative. Now, when we take the 5.53 per cent which this suggested compensation makes, and which is shown in a red line below the actual three-year average—

The CHAIRMAN. You mean the 5.33 per cent?

Mr. SHRIVER. It should be 5.33 per cent. Thank you, Senator, for correcting me.

Senator GORE. Is that 1915, 1916, and 1917?

Mr. SHRIVER. The net operating income for the years 1915, 1916, and 1917, actually averaged, show a return of 5.54 per cent on the average property. When we take the additions to the property up to December 31, 1917, which is the period when the Federal control began, and relate to it the average income for the three years, then the return on that property is only 5.33 per cent.

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Mr. SHRIVER. It is more than that, because when you take the property for the three years and averaged it, you do not get the property value that you had at June 30, 1917, even. It is much below the property at June 30, as I will show in a few moments. What I mean you begin with the properties that were utilized in 1915, then we added something to it in 1916, and we added something to it in 1917, so that you are constantly building up a property, and when you average the three years you do not get the real amount of property in use at June 30, 1917, though that, as well as the actual increase

4.0						
3.5						
3.0						
2.5						
2.0						
1.5						
1.0						
0.5						
0.0						

**Fiscal
year**

1900
1901
1902

1903
1904
1905

1906
1907
1908

1909
1910
1911

1912
1913
1914

1915
1916
1917

**Period average
Three year**
1900 to 1902
1903 to 1905
1906 to 1908
1909 to 1911
1912 to 1914
1915 to 1917

Dec. 31, 1917

*** Repre
Inces**

in property to December 31, 1917, is the real factor which produces the new ratio of 5.33.

Now, when we look at that 5.33 per cent we find that is lower than the three-year period from 1909 to 1911, although not apparently a great deal, but in all of these matters a very small percentage on this total of \$7,000,000,000 of property investment means a great deal in revenue.

Now, if I may state this case in dollars instead of ratios, we get the following results: The property investment averaged for the three years to June 30, 1917, was \$6,950,678,000. The property investment at June 30, 1917, was \$7,116,424,000. The additional investment in road and equipment for the six months, July 1, 1917, to December 31, 1917, partly estimated, was \$110,000,000.

Senator GORE. That is from July 31 to December 31 of this year.

Mr. SHRIVER. At June 30, 1917, the property aggregated \$7,121,776,000, and from July 1, 1917, to December 31, 1917, there was added \$110,000,000 for these 38 railroads. We had returns from about 85 per cent of the roads, showing an actual ascertained increased investment of about \$97,000,000. And the difference is the amount estimated for the roads not reporting.

Senator WATSON. Well, now, do you include that \$110,000,000 in bringing this down to the 5.33?

Mr. SHRIVER. We do; yes.

Senator GORE. That is what brings it down.

Mr. SHRIVER. Yes; that plus the difference between the average property and the actual property at June 30, 1917. There is a further sum involved there which makes a difference between the average property of \$6,950,000,000 and the actual property at December 31 of \$7,226,000,000 or \$275,746,000, which has in fact been added to these properties, during the period of high interest rates, and for which the suggested base of compensation makes no allowance.

Mr. THOM. Have you got the figures there to show if you did make an allowance for it what it would mean in dollars?

Mr. SHRIVER. The three-year average operating income or so-called standard return is \$384,840,150. If the earnings were scaled up to the total property at December 31, 1917, it would be \$400,685,207, or an increase of \$15,845,057.

As a concrete example of how this operates, I will refer to the Baltimore & Ohio Railroad Co., which, in an effort to meet the pressing demand for services early in 1917, contracted for 40 locomotives, 100 steel passenger cars, 4,000 freight cars, at a total cost of over \$10,000,000. Some of those contracts were made in December, 1916, others in February, 1917, and others still in April, 1917. We had expected the deliveries on that equipment during the period up to June 30, 1917. We had expectations that they would be delivered, but for the reasons that Mr. Kruttschnitt has described, neither the locomotives nor cars were delivered to us in that period. Our order was set back on account of the emergency orders from abroad.

Senator WATSON. Right there, did you get any new equipment during this period?

Mr. SHRIVER. None of that equipment during the period. None of these cars contracted for were delivered in the period up to June

30, 1917, nor were they in the property account at that date, although, in order to provide funds to pay for this equipment, we, on April 1, 1917, issued an equipment trust loan for \$10,000,000.

Senator WATSON. Well, have they since been delivered?

Mr. SHRIVER. They have nearly all been delivered, or at least a very large proportion of the equipment was delivered up to December 31, 1917.

Senator WATSON. Then they will add to the earnings of the Government, if they have an earning capacity, whereas they did not add, of course, to the earnings of the railroad when you were operating.

Mr. SHRIVER. That is correct. The railroad had the use of some of them part of the time, between July 1 and December 31, 1917.

Mr. THOM. But did not add to the earnings at all during the test period.

Mr. SHRIVER. It had no effect whatever on our earnings prior to June 30, 1917, and notwithstanding the fact that commencing April 1, last, the interest commenced to run on the \$10,000,000 which we had borrowed at that time to pay for the equipment. In addition to that, in the six months, to December 31, 1917, the road expended for new construction and betterments over \$5,000,000, or a total of \$15,000,000 of money that has gone into property, practically, since June 30, 1917.

Senator POMERENE. 1915?

Mr. SHRIVER. Since June 30, 1917.

Senator WATSON. I wish the stenographer would read that answer. (The stenographer read the answer as requested.)

Mr. SHRIVER. Does that clear that point, Senator?

Senator WATSON. Yes, sir.

Mr. SHRIVER. In addition to that \$15,000,000, the company expended between January 1 and June 30, 1917; that is, in the six months prior to the date when the compensation is fixed—\$5,000,000 for additions and betterments, which were not completed in that period, and which were not in operation and had no bearing on the earnings of that period.

Senator POMERENE. You mean by that that they were not on the property account.

Mr. SHRIVER. They were in the property account, but they were not producing. They appear and are included in our property investment, as it is included in these compilations at June 30, 1917. It is true that the property was in existence, although it was not productive that time and had not been up to that time.

Senator POMERENE. In a general way describe what that was—what class of property. I do not care to go into details, but give the committee a little idea as to what it was.

Mr. SHRIVER. Well, some of the items were new yards, a coal-handling plant.

Senator POMERENE. What?

Mr. SHRIVER. A new yard for cars, and a coal handling dumping plant at the harbor of New York. The year before we had a good deal of congestion there with our old plant. Furthermore, the citizens at St. George, where our old plant was located, were insistent that we take the noisy operation out of town. So we went farther down the island, bought new property, and constructed a new yard and a new dumping plant.

Senator WATSON. Now, in that connection, you are speaking of the Baltimore & Ohio alone, are you?

Mr. SHRIVER. Only the Baltimore & Ohio line. I am simply citing this as an example of how this might operate with the roads generally.

Senator KELLOGG. Right there, would not that be made up by property which was under construction at the beginning of 1915, which would go into the earnings as for 1915?

Mr. SHRIVER. That would measurably be so, and possibly should be considered against what was not in operation during the later period. As a matter of fact, there was much less expended in the six months January to June, 1915, \$2,500,000, about, compared with about \$5,000,000 January to June, 1917.

Senator KELLOGG. That is, ordinarily if you cut off a period of three years, it will lap over at both ends, so when you ordinarily would make up the other half, your improvements are continuous.

Mr. SHRIVER. In an equal proportion; but I have only cited \$5,000,000 of improvements, which we know definitely were not completed and which we know were not producing, January 1 to June 30, 1917, although there were many other improvements going on at this time, and some of which were completed. Further, in answer to Senator Pomerene's question: The coal-handling plant at New York, as I recall it, was \$1,100,000. We were building at that time a new line to the new shipbuilding plant at Baltimore, \$450,000. The capital cost in the restoration of two piers at Baltimore, \$1,000,000. Those piers were destroyed by fire, and the cost of restoring them under the present prices is unusually high—the morning after that fire we made contracts and bought material wherever we could get it, at any price, in order to put those piers back as promptly as we could, because the Government was anxious to utilize the piers at this time.

Mr. THOM. That \$1,000,000 represents not the entire cost of those piers?

Mr. SHRIVER. No; the entire cost will be something over \$1,500,000, but the value of the old pier on the books is written off to expenses, and this represents the increased capital expenditure involved in that proceeding.

Mr. THOM. Are you alluding to the items of expense since June 30, 1917, now?

Mr. SHRIVER. This is the entire period from January 1, 1917, to December 31, 1917; that is, all of this equipment—all of this construction—is new money that has gone in, although some of it went in prior to June 30. None of it had any bearing on the operating income of the test period, excepting as has been referred to, where there were some offsetting accounts coming over in 1915. Further improvements were a new second track on our Chicago division, about 27 miles, was just completed and put in operation a few weeks ago, and will facilitate the movement in that section very much. That cost \$1,445,000. We are putting in tracks at the cantonments at Admiral, Md., and Chillicothe, Ohio, for the Government camps, over \$450,000. (Just how much of that, if any, the Government will reimburse to us directly is undetermined.)

Senator POMERENE. That was running, was it not?

Mr. SHRIVER. Not in this period up to June 30, 1917. In fact, they were not completed up to that time and were not in operation or receiving any returns at that time. A total of miscellaneous items I

have recited of \$10,000,000, in addition to \$10,000,000 of equipment referred to, or a total of \$20,000,000 for new road and equipment, which will be available for use under the Federal operation, but for a large part of which no compensation whatever is provided under the three-year guaranty.

To provide for the cost of these facilities the railroad company has issued its notes and equipment obligations, and hereafter must meet the increased interest charges and the annual equipment trust installments, aggregating about \$2,000,000 a year; that is, the interest on the \$20,000,000 at 6 per cent equals \$1,200,000, and there is \$1,000,000 annual installment to pay on account of this equipment, so we have something over \$2,000,000 a year to pay on account of these improvements available for Federal use at January 1, 1918, but for which the company would receive no compensation.

I have no doubt there are many instances on other roads that will be similar to that. I want to refer incidentally to a few other factors that have an effect on the carrier's net operating income—the matter of maintenance. It is suggested that during the period of Federal control adequate depreciation and maintenance of the properties of the carriers shall be included as part of the operating expenses, or provided through a reserve fund. The expenditures for maintenance and charges for depreciation bear an additional relation to the net operating income of the carriers. Because of the changing prices of material and rates of pay, it is not practical to measure the item of maintenance in dollars; that is, it would not be practical to say that your average obligations, maintenance expenditures, in the past were so many dollars, and in the future, if the same amount of dollars were spent, that you would get the same relative material and work applied in maintaining the property.

Senator POMERENE. What do you charge off for depreciation? What rule have you?

Mr. SHRIVER. With the Baltimore & Ohio Railroad Co. we have adopted a series of percentages which, in the opinion of our operating and mechanical officers, are proper, based on our experience over a series of years. If you are interested in those percentages—

Senator POMERENE. Well, if you can just give me some general idea about it is all I care for.

Mr. SHRIVER. The total equipment value, or what we call the net value of equipment, which is the total cost on our books, less the ultimate scrap value—that is, we assume that the ultimate scrap value will not depreciate; that we will some day get that back, when the car is destroyed, but the amount of money value of this equipment for depreciation purposes was at December 31, 1916, \$100,036,000. At December 31, 1917, it was \$108,000,000. Our depreciation was based generally at 4 per cent on locomotives, 3 per cent on steel equipment, 5 per cent on wooden equipment, 3 per cent on passenger equipment, 5 per cent on working equipment, and 3 per cent on floating equipment.

Senator GORE. On what?

Mr. SHRIVER. Barges and tugs.

Senator GORE. Floating equipment?

Mr. SHRIVER. Yes. In addition to the direct depreciation, there comes into this same account charges on account of retiring equipment because of obsolescence. That is, a car that goes out of existence be-

cause no longer fitted for service. If it has been depreciated only \$400, and its scrap value is \$200, there is \$200 still to be disposed of and that is charged up also to expenses under the general heading of depreciation and renewal. The \$200 would be a renewal item, so called, so that all of the depreciation is not reflected in percentages, but in addition to the standard percentages, there is charged to expenses and credited to renewal account the difference between the net book value and the scrap value of equipment that goes out of service.

Senator LA FOLLETTE. Is that an item—the obsolescent item, is it of very considerable importance?

Mr. SHRIVER. In this three-year period, for instance, these years—I have not the year, June 30, 1917, because we changed our basis of accounting, but for the year ended June 30, 1916, the depreciation charge was \$3,288,000 and the renewal item \$2,047,000, or a total in that year of \$5,335,000. The preceding year the renewal charge was \$1,011,000 and the depreciation charge \$2,852,000. The year previous to that, June 30, 1914, the renewal charge was \$862,000 and the depreciation charge \$2,691,000. The total charges to operation in these three years, June 30, 1916, \$5,335,000; 1915, \$3,864,000; 1914, \$3,554,000, or about \$4,250,000 as an average for three years. The average for the three years in the test period would be somewhat higher than that, but that is approximately what the charge would be during the three test years that have been taken.

Senator POMERENE. The average?

Mr. SHRIVER. On the average.

Senator GORE. What does it average?!

Mr. SHRIVER. \$4,250,000. Now, if we had charged that——

Senator POMERENE. Your total property investment during those years was \$555,000,000?

Mr. SHRIVER. The average; yes, sir.

Senator POMERENE. That would run about one-fifth of 1 per cent.

Mr. SHRIVER. This depreciation applies only on the equipment, of course, not on the total property, and would be on the equipment value about 5 per cent. Now, if we had charged 2 per cent instead of 5—and that is a purely arbitrary matter with the road—there is no requirement under the commission's accounting to fix the percentage charge, but we elect our own percentage, the commission only requiring that if you adopt a percentage at the beginning of the year you must carry it through that year. If we had, for instance, instead of applying what averages 5 per cent on this property we had only made a charge that averaged 3 per cent it would have meant \$2,000,000 less expenses and would have been added to our net operating income. That is, it would have been \$2,000,000 in one year. Well, it would be something like a million and a half dollars on the average. Just a question of discretion whether we charged 5 per cent or 3 per cent, and I mention it that you may see that this item must be given consideration in determining the operating income of carriers.

Senator POMERENE. Are these charges substantially the same in your class of roads?

Mr. SHRIVER. There is probably no item that varies more than the question of depreciation. It is handled in many different ways, and I do not think the percentages are comparable. Now, as I remarked, if we had changed our basis from 5 to 3, it would be—it would have meant at least a million and a half dollars, or a sum equal to 1 per

cent on our capital stock of \$152,000,000. That is, we could have made the appearance of an earning of 1 per cent more on our stock by the simple question that we had elected to make this charge or some other charge.

Now, we assume that this depreciation and renewal, which is really a selling of the property or the equipment to the operations, under the act, becomes a reserve fund from which the carrier may, should it elect, retire its equipment obligations; that is, it may be applied in payment on this equipment which we have bought and are paying for on the installment plan. It is a poor man's way of buying equipment—buying equipment payable one-tenth each year—and this fund arising from charges account, depreciation, and renewals will be necessary and will, no doubt, be available to apply in retiring those obligations. The charges for depreciation and renewal should be on the same bases during this period of Federal operation as was the practice during the test period.

In the matter of maintenance of way it is assumed that the carriers would be protected through the applications of the average quantities of materials, such as rails, ties, and ballast, as the various carriers applied on the average during the test period, and in the event that the average quantity of material was not applied there would be charged to expenses a sum representing any decrease in the application of material and work done which would constitute a reserve fund from which the deferred maintenance may be met, when the men and material are available for this purpose. I did not mean to intimate by that that the Federal control would expect to reduce the standard of maintenance at all. On the contrary, it is the general belief that they will have to, on the main lines, in order to get the larger business handled, increase the maintenance, but it is possible that because of that very necessity maintenance on unimportant lines, or branch lines, will be or may be deferred, and it will be necessary, if the ties, for instance, were not renewed in that year, to have a fund out of which they may be properly renewed in the future. The bill provides that the property will be returned to the carriers in generally good condition, and it would seem to be equally important that the integrity of their administrative accounting and commercial forces be maintained if the railroads are to be continued and returned as a going and operating proposition.

The attention of the committee is also directed to some other factors which are of importance; that is, with respect to all of the roads. Instances, during the period taken as a standard, where the net operating income of a particular carrier was seriously affected because of fires, floods, failure of crops, or other emergencies beyond its control. Instances where, for all or any part of the period, railroads have been operated in the hands of receivers pending a reorganization, and where, possibly by the application of new capital, the operations have improved, and so the three-year average period is not fairly representative of what has been demonstrated as the earning power of the particular properties acquired under the organizations.

To summarize: (1) The suggested basis of compensation gives the carriers in the eastern district less actual income than they received from the operations of their properties in several years prior to 1917, and a basis of return upon their property investment less than that

realized in a majority of the preceding 15 years. (2) The three-year average of net operating income is a flat sum and does not properly allow for the increase in investment between June 30, 1915, and June 30, 1917, and makes no provision for additional investments made between June 30, 1917, and December 31, 1917.

Senator WATSON. Are any of these 38 railroads in the hands of receivers, or were any of them in the hands of receivers at that time; that is, during the last three years?

Mr. SHRIVER. The Wabash Railroad just came out of the receivership; Wheeling & Lake Erie, Cincinnati, Hamilton & Dayton, Pere Marquette. There are some five or six roads that were in that situation. Newly constructed roads, not completed or in operation for the entire period, and which might still be undergoing development. I have in mind a road 30 miles in length which is just being completed, now being built into some coal fields in Kentucky, where the expenditure will aggregate for the period about \$1,800,000, and for equipment \$850,000, which is entirely a new operation. I do not suggest any criticism of the provisions of the bill in this connection because I have no doubt that it will be amply protected and cared for under those provisions.

Senator UNDERWOOD. Let me ask you right there: You recognize the fact that if we adopt the plan in the bill—at least I judge from what you stated that you recognize the fact that there are certain railroads that it can not be worked out equitably in reference to. Now, what is your suggestion in reference to a modification of this plan for railroads that we could not give the necessary income for a period of years to.

Mr. SHRIVER. Well, personally, I have felt that the provisions of the plan might be workable; that is, to such roads. That is, as I understand, to be referred to a body of accountants under the Interstate Commerce Commission, who might consider their proposition and submit it to the President, recommending a basis which might be applicable to such cases, and I assume that they might be equitably dealt with.

Senator UNDERWOOD. Then, your viewpoint on that is that, so far as the enactment of legislation that would not limit the operation of the bill, so far as the roads that you refer to are concerned, but would leave it entirely to the discretion of the President?

Mr. SHRIVER. I should think that it at least would be better than limiting the bill. That is my own personal opinion.

The CHAIRMAN. What particular character of road? I mean what condition would a road be in that you think that this bill, as now drawn, could not apply to?

Mr. SHRIVER. Well, for instance, I have in mind the Cincinnati, Hamilton & Dayton road, which has just been reorganized. Money has been put into that road during the receivership—several millions of dollars. It is now reconstructing a line, 60 miles long, which will connect with the Norfolk & Western and Chesapeake & Ohio at Chillicothe, Ohio, and will become an important line. During the first year of the three-year period the road was in the hands of the receivers; the receivers, having no other funds, were very liberal in upbuilding the property through their maintenance charges; in addition 1915 was a very poor period with the result that there was a deficit on the Cincinnati, Hamilton & Dayton road in the first of the

three years; in the second year, as I recall, the earnings, interest, etc., were \$1,489,000, and in the third year \$1,130,000. I think the last two years, in that case, much better represent the present earning value of that property than the average of the three years, which was \$857,000.

Senator ROBINSON. Why were the earnings so much higher in 1916 than in 1917?

Mr. SHRIVER. More lake coal business in the first instance and heavier car hire charges in the second, higher costs for labor and fuel; but even those earnings, in my opinion, do not represent the present actual earning value of that road. In fact, as I recall it, for the year to December 31, 1917, it will earn net for capital over \$1,500,000.

Senator ROBINSON. In 1917?

Mr. SHRIVER. Year to December 31, 1917.

Senator POMERENE. Why the great decrease here from \$56,000,000 property investment in 1913, but for \$40,000,000 in 1916?

Mr. SHRIVER. That is due to the changes in the property. I think that whole amount would have to be restated here. In that period some lines were dispensed with. The present Cincinnati, Hamilton & Dayton road has 420 miles of the original 1,000 miles; certain lines have been dispensed with and, as they were operated at a loss, it has the effect of increasing the earnings of the lines that are left. That is, the other roads did not earn their operating expenses.

The CHAIRMAN. That road that you have just mentioned is typical of a class which, being reorganized, has an immediate prospect of larger earnings than would be shown by taking the three-year average indicated.

Mr. SHRIVER. I think that is so.

The CHAIRMAN. Are there other roads?

Mr. SHRIVER. The roads that have been referred to here—Pere Marquette, Wabash, and several other lines—if it were simply the operation of the same old property it would be a different matter, but they have expended in almost every instance additional funds and have made new arrangements which make them better operating properties than they were at the beginning of the three-year test period.

The CHAIRMAN. I do not mean were there any other roads. I said this would be typical. Were there any other conditions under which this might not apply? Do you know of any other roads under different conditions from those that have been reorganized and have a prospect of a greater return?

Mr. SHRIVER. Well, there is the instance of an entirely new railroad which has not made any development as yet.

The CHAIRMAN. Well, that would come, perhaps, in this class.

Mr. SHRIVER. Yes; I think so.

The CHAIRMAN. But are there any railroads that you know of whose earnings prospectively are not greater than they are now that might be affected disastrously, I mean?

Mr. SHRIVER. Well, I could not say. I would not know of any particular conditions that affected the roads in general in this district which would apply to many other railroads other than those that are in these peculiar situations and which no doubt would have to be dealt with separately.

Mr. THOM. Mr. Shriver, in connection with your statement of the comparative results and the average of the fiscal years 1916 and 1917, have you not a table by individual roads showing that average and its comparison with previous individual years?

Mr. SHRIVER. Well, we had this only by rates of return.

Mr. THOM. And also a table that shows that in detail, by rates of return? I thought you had both.

Mr. SHRIVER. We have a table which shows the average return. That is, it shows the dollars and cents average for the three years and shows the average rate of return, but it does not compare the dollars and cents with the previous years but simply the percentage returns on property investment. It would not be significant, in my opinion, to compare the dollars and cents earnings with earlier years, because the change in property would not be reflected in that.

Mr. THOM. I want the table first, and then the detail of it.

Mr. SHRIVER. Mr. Thom, I would suggest that you might have that incorporated, if it is essential, without delaying the committee longer.

Mr. THOM. And introduce this table, too. It is drawn graphically to show the years above and below. Some members of the committee might want to ask questions about it. Well, we will have to reserve that.

The CHAIRMAN. Very good. Mr. Shriver, I would like to ask you a question right in this connection—in connection with your first exhibit here.

Mr. THOM. That will be inserted at this point, Mr. Chairman?

The CHAIRMAN. Very good. Without objection, we can insert that.

SHRIVER EXHIBIT E.

Rate of return on property investment for years 1900 to 1917 compared with average for three years to June 20, 1917.

Average return on average property investment (3 years, 1915-1917)..... 5.54
Average return (3 years, 1915-1917) on property investment to June 30, 1917..... 5.41

	Above average rate of return.	Below average rate of return.		Above average rate of return.	Below average rate of return.
1900.....		5.20	1909.....		5.33
1901.....		5.35	1910.....	6.05	
1902.....	5.54		1911.....		5.06
1903.....	5.63		1912.....		5.02
1904.....		5.32	1913.....		5.19
1905.....	5.67		1914.....		3.89
1906.....	6.08		1915.....		4.34
1907.....	6.02		1916.....	6.53	
1908.....		5.04	1917.....	5.71	

The CHAIRMAN. I noticed you have a period covering practically 14 years, and your entire average net operating income, the rate of return is 5.36. That includes good years and bad years, or, for all all your investment and equipment as compared with your full statement up to December 31, \$7,226,424,426, and the amount allowed under this bill, if it would become operative, \$384,840,150, making 5.33 per cent. Would that be a very liberal allowance on the part of the Government to the owners of the roads to keep up all of their equipment and to make whatever improvements have been made heretofore upon the basis of your showing?

Mr. SHRIVER. This average of 5.33, if I understood your question, is not for the 14 years.

The CHAIRMAN. Oh, no; I say the 5.36 was the 14-year period, taking in everything.

Mr. SHRIVER. Yes.

The CHAIRMAN. Now, including your subsequent investment since June 30, 1915, to December 31, 1917, raising it, according to your figures, from \$6,950,000,000 to over \$7,000,000,000 reduces your present rate of return to 5.33, compared with the 14-year average of 5.36.

Mr. SHRIVER. That is right, sir.

The CHAIRMAN. Now, taking in the disastrous years, including 1914 and all of the years, good, bad, and indifferent, you have only got 0.03 per cent difference. Would that not seem to be a pretty liberal allowance on the part of the Government for the roads to keep up and maintain, averaging for 14 years?

Mr. SHRIVER. You understand this final percentage is the sum that is available for interest and taxes. There is the additional income tax, which will reduce this return.

The CHAIRMAN. Well, as I understand it, the standard taxes have been accounted for in your return.

Mr. SHRIVER. The standard taxes have been, but the additional tax on these roads, which would probably be something like \$25,000,000, has not been provided for.

The CHAIRMAN. What additional tax do you mean?

Mr. SHRIVER. The excess-profits tax, so called, or the difference between 2 per cent, as I recall it, and 6 per cent income tax.

Senator CUMMINS. That has not been estimated in the tax accruals.

Mr. SHRIVER. No; they have not.

Senator CUMMINS. But they are not to go in in ascertaining this standard.

Mr. SHRIVER. No; but if we deduct them from the \$384,840,000 it would reduce that allowance so the carriers would have for their interest and other purposes, say, \$364,000,000, and so further reduce the percentage of return on their property investment.

The CHAIRMAN. The part that I wanted to get clear was, that you had a 14-year average on investment, that has been increased from time to time, of an average of 5.36, bringing up your investment to December 31, 1917, to 5.33. Now, that is not the 14-year average. I am taking the average for the three years allowed, and allowing your increase to December 31 would reduce it from 5.54 to 5.33. But even the 5.33 is but 0.03 per cent lower than your 14-year average, taking all of the years into consideration, 1914 included.

Mr. SHRIVER. That is so, but that 0.03 of 1 per cent is equal, as I figure it roughly, to \$21,000,000.

The CHAIRMAN. I made some mistake. I had figured it out on your increased property to be about \$15,000,000.

Mr. SHRIVER. It would be 0.03 on the \$7,000,000,000, or \$21,000,000. Answering your question, you take an average of this 14-year period, which includes many years in which the many roads did not earn their fixed charges, and you include a period when the roads were contending for higher rates and their owners felt that they were clearly not fairly compensated. Now you put all of those years into

the average and you get the 5.36, and the suggestion for compensation is lower even than that.

The CHAIRMAN. Well, the reason I was asking this question was, it had been stated here that possibly we ought to eliminate one of the three years and not count it, it being a disastrous year, and I just wanted to get what was your idea as to the fair basis of compensation when under private ownership you were liable to the disasters which have occurred from time to time. I wanted to know if you did not think that was probably a fair basis to undertake, or a liberal one?

Mr. SHRIVER. Answering your question, personally, I do not think it would be. I do not think it is a basis on which a great many of these roads in the eastern district could meet their obligations for the future.

Senator ROBINSON. Have you worked out a plan which you think would be fair for the railroads you are speaking about?

Mr. SHRIVER. I have not done that.

Senator McLEAN. Do you think 6 per cent would be fair?

Mr. SHRIVER. As against 5.54 average for the three years that has been suggested as a base, the return in 1916 was 6.52. The average return for the 38 systems for the period taken was 5.54. Personally I would say, and I speak without consultation with anyone, that if that average basis for all the lines were 6 per cent and prorated back to the roads in the proportion the earnings of each were to the total it ought to be, in my opinion would be, satisfactory to a large majority of these roads.

Senator McLEAN. Would less than that be satisfactory?

Mr. SHRIVER. I would not like to express an opinion.

Senator ROBINSON. During the period you have testified about they have never gone beyond 6.53 in 1916, have they?

Mr. SHRIVER. No, sir; they have not.

Senator ROBINSON. That is the highest, and in other years what is the lowest return, expressed in percentage?

Mr. SHRIVER. The lowest in 1914, 3.88 per cent, and the other years that approximated 6 per cent were 1906, 1907, and 1910.

Senator ROBINSON. 1910, 6.05 per cent.

Mr. SHRIVER. 6.05; yes, Senator.

Senator ROBINSON. 1907, 6.02, and 1906, 6.08.

Mr. SHRIVER. As I recall it, I think the average of the two years, 1916 and 1917, that have been talked about as possible, is 6.11 per cent.

The CHAIRMAN. You mean 1915 and 1916?

Mr. SHRIVER. 1916 and 1917.

The CHAIRMAN. From June 30, 1916, to June 30, 1917.

Mr. SHRIVER. Would be 6.11 per cent.

Senator WATSON. Are you through, Senator Robinson?

Senator ROBINSON. Yes.

Senator WATSON. Mr. Shriver, I think these roads lie north of the Ohio River and east of the Mississippi River, do they not? They are all in that territory.

Mr. SHRIVER. North of the Ohio River and east of the Mississippi, excepting the Chesapeake & Ohio and the Norfolk & Western, which are below the Ohio River line, but they are still considered in this group.

Senator WATSON. Now, aside from Pittsburgh and that territory, at what other points was there a congestion of traffic in the last year?

Mr. SHRIVER. The congestion of traffic affected practically all of the eastern terminals—New York, Philadelphia, Baltimore, and pretty much all over these roads. As a matter of fact, the roads in the East generally were filled with more cars than they could reasonably handle.

Senator WATSON. Now, Mr. Kruttschnitt has gone into the proposition as to how that was handled and what the results were, and all that. It is not necessary to go into that. I would like to ask you this general question, to get your opinion. After the War Board began to operate and have charge, can you give any estimate of the traffic that the roads failed to handle?

Mr. SHRIVER. Since the control was taken over, you mean, December 31?

Senator WATSON. No; while the Railway War Board was operating. They did not handle all the freight; the roads were not handling all of the freight under their management?

Mr. SHRIVER. No.

Senator WATSON. Now, can you tell what percentage of the traffic they failed to handle in that time?

Mr. SHRIVER. I would hardly say that the War Board failed to do it.

Senator WATSON. Well, the roads did not do it under their management?

Mr. SHRIVER. The roads did not handle anything near—and I am speaking of those roads that I am more familiar with—anything near the offering of coal tonnage, for instance, and other commodities in this territory. We have not been able to handle anything like the quantity of traffic which the shippers wanted to give us.

Senator WATSON. Was that largely coal or was it munitions, or what did that traffic consist of that you could not handle?

Mr. SHRIVER. Well, it was some of all traffic, but coal was one of the particular items, although there was more coal handled, I think, in this period than in the previous year, and more business altogether handled than in the previous year; the roads did not take care of all the business all of the people wanted to ship. Speaking of the munitions and other war material, that was the character of traffic which was preferred—given preference orders—and, of course, to the extent that the Government called for preference and Government business had preference it reduced the facilities the general public could command.

Senator WATSON. How much did these 38 roads handle in actual tonnage after the War Board took charge than they handled before?

Mr. SHRIVER. I could not give you that fact.

Senator WATSON. Mr. Kruttschnitt stated that he was not familiar with the eastern road situation at all, and therefore could give no information on that point, and we did not know but that you might be able to do it.

Mr. SHRIVER. I think we can get you a figure.

The CHAIRMAN. Mr. Shriver, I want to ask you this question: You are representing that particular division of the railroads where this congestion was greatest. Did the congestion interfere with the maxi-

mum business that you might have done? That is, did not the congestion actually subtract from the business that you might have done if you had facilities for handling it at the terminals?

Mr. SHRIVER. Undoubtedly. The minute you get beyond what you can dispose of currently you commence to lose in efficiency. What happened was that when the vessels could not take care of the export freight and it commenced to back up in the terminal yards at the seaports, you commenced to hold back in the yards all along the line, and that took up the tracks which would ordinarily be available for drilling freight, getting ready for movement, and retarded the whole movement.

The CHAIRMAN. So that your roads could have really handled more stuff if there had been a greater mobilization elsewhere to relieve the congestion there?

Mr. SHRIVER. Undoubtedly. As a matter of fact, under the orders of the War Board, these roads, in order to get this congestion off their hands, gathered up vast quantities of empty cars and made special runs of them out of this territory in order to relieve the situation, although in some instances empty cars were taken right away from points where they could have been loaded if they had been held for the traffic.

The CHAIRMAN. Was this congestion largely due to the orders of the Government, ordering munitions to certain points, either for export, or for completion into other forms, or was it due largely—or was it not due largely—to the fact that these ports were the habitual ports for emptying and clearance for the bottoms that your roads contributed to?

Mr. SHRIVER. The business was undoubtedly naturally tending to these points, but there was more business tending to these particular points in this period than at any other time, and the traffic was further impeded, I think, by the difficulties that the railroads experienced with the labor situation. That, I believe, has been explained, and I won't go into it at all in detail. But, for instance, our station forces were turned over, and over, and over again. The industries generally were offering and paying higher wages to capable men than our rates of pay in that kind of work, and there was a constant turnover of those men which brought us to the point where we had to do a great deal of our work at terminals with inexperienced men. In the same way, in the machine shops, probably 40 or 50 per cent—there has been an actual change of more than 40 or 50 per cent—of the men, and there has been several hundred per cent of changes in the number of men.

Senator ROBINSON. How many went out on draft?

Mr. SHRIVER. I do not know.

Senator ROBINSON. Were there a considerable number?

Mr. SHRIVER. There were, yes. We have, as I recall it, on our service flag already something over 2,000 stars representing men who have gone into the service as volunteers or through draft—chiefly volunteers.

Senator WATSON. When you say "we" what do you mean?

Mr. SHRIVER. The Baltimore & Ohio Railroad.

Senator ROBINSON. I was asking you about the 38 roads.

Mr. SHRIVER. No; I do not know the aggregate number of men.

Senator WATSON. Did any one of the 38 roads fail to obey the orders of the War Board?

Mr. SHRIVER. I can only speak for one road in that, viz, the Baltimore & Ohio, and as far as we were physically able we carried out every order we received.

Senator WATSON. Do you know whether or not the others did?

Mr. SHRIVER. I think there was a very general recognition of all the orders that emanated from the authorities—war board authorities.

The CHAIRMAN. Mr. Shriver, what, in your opinion, would have been the effect if the railroads had the power to have routed this freight at their pleasure and to have interchanged freight—pooled their earnings upon this congestion?

Mr. SHRIVER. Well, probably if they had the right to pool the business and pool the earnings—that is, if you could feel that you could have given up business without losing the benefit, there might have been an earlier response to the situation. I think, so far as the orders were concerned, after the war board took charge that we did the business practically as we would have if we had pooled it, so far as it was practicable to do it. That is, we handled the business on every order regardless of whether we got the earnings or not. I can give a single instance of that. We have a road running from Cincinnati to Toledo and intersected at a point by our line which goes to Chicago. Now, we were handling business from Kentucky over this line, Cincinnati to Deshler, and then over 200 miles of low-grade line to the terminals at Chicago. When the demand came for a greater supply of coal to the Lakes, the war board suggested that we ought to go out of the Chicago business—that is, surrender this profitable business that was going to Chicago and take more business to Toledo, which was a shorter haul and gave us much less revenue. We immediately retired from the Chicago business and that business went to other roads and we lost the revenue. Now, if we had had a pooling arrangement of revenue we would probably have said to our neighbor, "We have to give up this business giving us this revenue, and we will turn it over to you if you will prorate some of these earnings with us," but in this case our earnings in that period suffered from the fact that we voluntarily complied with the suggestion, which clearly resulted in a greater amount of coal tonnage tending to the Northwest, and this line's terminal at Toledo, I think, was the one terminal on the Lakes that had a very marked increase of tonnage dumped during the season over any previous year.

The CHAIRMAN. Your opinion is that if there had been a suspension of the restrictive laws under which the railroads were operating that it would have gone far toward relieving the condition that obtained, and that led to this Government control?

Mr. SHRIVER. I think it would have suggested more promptly and quickly to the railroad management to get together and see how this traffic could be moved more quickly.

The CHAIRMAN. But it would have been necessary to have suspended the operation of the restrictive law that was thrown around you in order to accomplish the fullest mobilization and handling.

Mr. SHRIVER. I think that is so.

Senator ROBINSON. Would you care to say whether or not in your opinion the condition of the traffic in the East, referring particularly to the 38 railroads you have testified about, is improving?

Mr. SHRIVER. At the present time?

Senator WATSON. Yes, sir.

Mr. SHRIVER. I doubt very much if it is improving much, because we have had a spell of the most severe weather that we have ever experienced, so far as I know, in this whole eastern territory, particularly along the line of the Ohio River, places where ordinarily you will get no lower temperature than, say, 20° above; and for a week past and for a great deal of the period since December 1 has been running 4°, 5°, and down to 12° below zero. For instance, at points like Cincinnati and Dayton, where they ordinarily are not prepared for severe winter weather, the engines froze up in the roundhouse, and there has been a great deal of that. Now, when those engines freeze up it takes longer to get them shaped up again for service. If I may put it this way, ordinarily we may have five days of very severe winter weather, that suspends things for a few days, but these difficulties can be overcome in another week. This winter we have had 30 or 40 days of continuously severe weather, and it will take time to overcome the effects because we can not make repairs as quickly as we could before, and the number of engines out of service is greater.

Senator WATSON. When did this condition of congestion of traffic first manifest itself in your territory?

Mr. SHRIVER. I think the congestion commenced in the fall of 1916.

Senator WATSON. Has it existed continually since?

Mr. SHRIVER. It has been growing gradually worse since that time. It was better last September, and would have been, I think, very much improved—that is, I think we would have gotten on top of the proposition and had a good deal better movement this winter had we not had this entire month of December with severe weather. That is, things were getting in position where there was a better response and movement.

Senator WATSON. Was there, in your opinion, a marked improvement when the so-called war board came into existence and began to exercise authority?

Mr. SHRIVER. I can only express a personal opinion on that from what I have seen. I would say that the suggestions emanating from the war board greatly facilitated traffic; I know it facilitated the business on our road very much. Of course, some of it was expensive. We picked up cars in Baltimore and made up solid trainloads to St. Louis, which is a very unusual thing.

Senator WATSON. Empties?

Mr. SHRIVER. Empties; yes, sir; and delayed traffic which wanted to go; but we could not hold the empties for it; then we had a situation at Pittsburgh which was the most congested territory the Baltimore & Ohio had, of a very heavy grade to get out of Pittsburgh west, and under the war board's suggestion the Pittsburgh & Lake Erie road permitted us to use their tracks between Pittsburgh and New Castle, that put our business on a low-grade road and enabled us to get more business through that congested territory than we other-

wise could possibly have done. It probably would not have occurred to the Pittsburgh & Lake Erie to have let us on their tracks at the ordinary train-mile basis except under extraordinary conditions. We might have worked it out with them, but, as a matter of fact, the suggestion emanated from the war board and was promptly acquiesced in, and that is simply one of probably hundreds of instances which worked to general advantage.

Senator WATSON. Will Government control assist in the matter of the labor problem?

Mr. SHRIVER. That, I think, is a question for the future, Senator.

Senator WATSON. You do not think you could express an opinion concerning that?

Mr. SHRIVER. I would not care to.

Senator WATSON. That is one of the difficulties that has contributed to the congestion, has it not—the less efficient labor and supplementing it with new and inexperienced labor?

Mr. SHRIVER. Yes; and then, again, that labor—even that new labor did not stay. It turned over and over again.

Senator WATSON. That is still going on, I suppose.

Mr. SHRIVER. That is still going on, although to not quite so great an extent as some time ago, largely, I think, because efforts have been made to further adjust rates of pay. For instance, on the Baltimore & Ohio Railroad we have increased our wages to machinists, as I recollect, over 26 per cent since last spring. That is, since last March our increases have been almost constant for some class of mechanical labor, and the aggregate basis on the September pay roll, as I recollect it, was about 26 per cent increase for that class of labor compared with the previous year. We have also only within the last few weeks increased our rates of pay to all of our clerical force. We have just had increased, by arbitration, all of our telegraphers. That increase in effect is about 20 per cent. Many of these increases have occurred since the closing of the rate case and are in addition to the large amount then shown.

Senator WATSON. Will it be possible to secure the necessary additional cars and locomotives and other equipment required to take care of the traffic in this eastern territory you have been speaking about?

Mr. SHRIVER. The Baltimore & Ohio has been pretty active in trying to get the equipment that it had under contract and which is yet to be delivered, and we have been able within the last 60 days to get a good deal of this equipment, and we understand that the builders will be able to complete that shortly. I understand there is a prospect that the builders generally can commence to fill orders of American roads.

Senator WATSON. Well, Government control would facilitate that. Would it not? If the Government exercised its authority toward securing more rolling stock, it would assist in that, would it not?

Mr. SHRIVER. I do not know that that is the particular situation. We have not received the equipment, not because of Government orders or lack of orders in the past, but because of the general suggestion of the authorities and willingness of the railway executives that their orders for equipment be set back under the general belief that it was better that equipment be first supplied to France and Russia.

Senator WATSON. But necessarily the Government would have to determine that if controversy arose about it. The individual railroads

could not do it, and probably the War Board itself could not do it. In other words, if a conflict arose as to whether locomotives should be furnished to France or whether they should be furnished to the railroads in this country to carry traffic here, it would involve in a measure a governmental action to determine that.

Mr. SHRIVER. I think that same matter could have been determined as effectively had the railroads been operated as they were, and if conditions came about where it was clearly necessary that the railroads in this country should have equipment in a conference between the railway managers, the builders, and governmental authorities a satisfactory conclusion could be reached.

Senator WATSON. You think it could have been just as well done under proper management?

Mr. SHRIVER. I think so.

Senator WATSON. I do not think so. I think that is one situation that adjusts itself to governmental control.

Mr. SHRIVER. Of course, the Government to-day could either order the locomotive builders to make those locomotives for America or for France.

Senator WATSON. The Government authority would be more likely to be appreciative of the necessity of the railroads if its representatives were familiar with the conditions. In any event, I wanted to ask your opinion about that.

The CHAIRMAN. What in your opinion would be the necessity for increasing motive power and rolling stock in these congested centers, if a complete or an approximately complete distribution of this freight to other ports and to other terminals could be made? What is your opinion of the capacity of American roads to take care of the freight that is offered if under one management they could deflect freight wherever it was most convenient to handle it?

Mr. SHRIVER. Well, the business, if it were generally distributed over the whole country the way it ordinarily is, the railroads could probably do a great deal more business, whether they were under Government control or under private control, because at the present time all of the railroads are not utilized to the same degree, although they are all very busy. I do not think the question of unified control would change the ports at which this business is to be done. That is already a matter of control by the shipping authorities. For instance, whether they would take the additional time to send vessels to Galveston and let the north and south roads be utilized to a greater extent and thus relieve this eastern district, but the general proposition has been heretofore that the saving of time of the vessels was so important that they must be loaded in these eastern terminals if they could be.

The CHAIRMAN. Is it your opinion that the Government could deflect these vessels to these different ports better or would be more effectual in routing them to other ports more than private control.

Mr. SHRIVER. Well, I do not know just who controls the movement of that shipping. I take it, it is under the control of a general board which is trying to get the shipping to the point where it will do the greatest possible service.

Senator UNDERWOOD. As a matter of fact, the Government has already directed a movement of freight to southern ports to relieve this congested condition.

Mr. SHRIVER. They have deflected a good deal of business in that way in recent months.

Senator WATSON. When the engines were sent to France, and cars, and also to Russia, was not that done by direct order of the Government?

Mr. SHRIVER. I think it was a matter of understanding and practical agreement between the governmental authorities and the railroad managers and the locomotive and car builders.

Senator WATSON. But the original request came from the Government, stating that they wanted so many engines and cars for France and Russia.

Mr. SHRIVER. Undoubtedly.

Senator WATSON. So that after all it really was a governmental proposition?

Mr. SHRIVER. Undoubtedly.

Senator TOWNSEND. Mr. Shriver, relative to labor, as I understand it, the roads now—the officers—operating and managing officers—are in control, the same as they were before the Government took them over, very largely?

Mr. SHRIVER. Well, so far we feel that we are.

Senator TOWNSEND. You are in it?

Mr. SHRIVER. We are in control directly. Of course, we must be subject to whatever directions we may receive from the Director General; but I do not know that he has given any suggestions other than to continue as you are.

Senator TOWNSEND. Do you feel at liberty to raises the wages of your employees?

Mr. SHRIVER. I think we might in instances to retain a capable man here and there. If it came to a question of increasing any large body of our labor and involved a considerable amount, I think we would not want to do that until we had conferred with the Director General.

Senator TOWNSEND. So that that matter you regard as belonging to the Government?

Mr. SHRIVER. I think we would not want to act unless we had had some conversation about that matter—that is, where it involved a large sum of money and added to the expense of the Government's operations.

Senator TOWNSEND. So that if a petition should come to you signed by any large body of your employees asking for an increase in wages, you would probably answer them by referring them to the Director General?

Mr. SHRIVER. Well, I am not the operating officer, and, therefore, I can not quite speak as to how that might be handled; but I do not think we would make that reference. I think we would listen to the petition, consider it, and if we had opportunity go into the merits of it and try to get posted as to the situation, and then probably confer with the Director General regarding the situation we found ourselves in.

Senator POMERENE. In other words, the buck would be passed?

Senator TOWNSEND. Yes; I imagine that is what would happen.

The CHAIRMAN. Are there any further questions?

Senator CUMMINS. In the course of your examination you have given the net corporate income as distinguished from the "net

operating income." What do the words "net operating income" mean as used in railway parlance or in the custom of the Interstate Commerce Commission?

Mr. SHRIVER. I think "net operating income," as we now understand it and as it is referred to in my statement, had not reached a definite place in accounting until we commenced to prepare our data for the rate case, although railroad accounting statistics generally had made toward the same results; but in the 1913 case we tried to allocate the exact earnings and expenditures incident to the operation of the particular transportation properties and so get the net results of operating all strictly transportation facilities. After debiting or crediting hire of equipment, joint facilities, etc., we get the "net railway operating income," which is the product of the operations of the railroad property. If you have other investments in bonds or stocks or outside investments of any kind, the net income from such investments is added to the railway operating income and becomes the "net corporate income" or the total fund available for the purposes of the corporation; that is, for rentals, interest, and dividends; after these deductions there remains the "surplus" against which there might be various charges.

Senator CUMMINS. Now, the table that you have presented shows that for the year 1917—I take it it is the fiscal year—the net operating income of the 38 roads or systems was \$406,461,566. What was the net corporate income of those roads for the same year?

Senator KELLOGG. Which year was that, Senator?

Senator CUMMINS. 1917.

Mr. SHRIVER. The net corporate income—that is, the gross corporate income after they added the income from other sources—gave a total revenue for that year of \$458,000,000, and after deducting the interest charges of \$204,000,000 it left a balance of "net corporate income," which is the fund available for capital, of \$253,000,000.

Senator CUMMINS. What was the payment of interest upon bonded and unbonded debt for that year, so that we may have the corporate income on the same basis that we have the operating income?

Mr. SHRIVER. That would be a deduction of \$253,802,000.

Senator CUMMINS. Would you be kind enough to add those two things together and the record will show what your corporate income was, or corporate incomes that could have been used, either for interest, dividends, or put into property?

Mr. SHRIVER. \$458,254,000 available for all those purposes.

Senator CUMMINS. That is an addition of \$52,000,000, substantially to the net railway operating income?

Senator KELLOGG. I did not understand that—\$52,000,000, did you say?

Senator CUMMINS. I am trying to find out how much money these railroads had at the end of the year.

Mr. SHRIVER. Now, if I may state it, the "net operating income," which was realized from operations of the railroads, was \$406,461,000, in round figures. The other income was \$51,792,000, making a total income of \$458,254,000. Now, that is the sum which is applicable to rentals, interest, and other items.

Senator CUMMINS. From the latter sum these roads had to pay the interest upon their obligations, which you have already given,

and the difference might have been available for dividends on stock, or surplus, whatever they cared to use it for.

Mr. SHRIVER. That is correct.

Senator CUMMINS. In your work for the Baltimore & Ohio Railroad, have you made yourself familiar with what has been done by the Valuations Committee or Bureau of the Interstate Commerce Commission.

Mr. SHRIVER. You mean as to the proceedings on valuations?

Senator CUMMINS. Yes.

Mr. SHRIVER. I only know generally of what they are intending to do.

Senator CUMMINS. It is true, is it not, that the law under which the commission is operating requires the commission to find two things, among others, the cost of reproduction, the cost of reproduction with depreciation and the investment—what you call here the investment account?

Mr. SHRIVER. The investment account?

Senator CUMMINS. As I understand it, this bureau or committee has ascertained those items with reference to four or five railroads?

Mr. SHRIVER. I understand that they have. Well, I know that they have as to several of the smaller roads.

Senator CUMMINS. Can you give us at this time the amount which the investment account or book value is greater in either of the roads examined than the cost of reproduction, or the cost of reproduction with depreciation?

Mr. SHRIVER. The roads that have been so far tentatively valued—I think the commission simply suggested a tentative valuation—are not in the eastern territory that I have referred to, and I am not familiar with the details of these tentative valuations, although it is a matter of record, of course, I believe that the Chicago & Eastern Illinois has been tentatively valued, and in that case, as I recall it, the property investment was found to be very much greater than the capital.

Senator CUMMINS. That is true of all of the roads that have been examined so far, is it, that the property investment account is very much greater than the cost of reproduction?

Mr. SHRIVER. I beg your pardon. If I made that statement, that is not what I intended to imply with reference to that particular road. In that case, the property, not the property investment, but the property was found to be of greater value than the capital.

Senator CUMMINS. Well, the cost of reproduction, with depreciation.

Mr. SHRIVER. The cost of reproduction with depreciation even was greater.

Senator CUMMINS. You have not the reports of the committee or bureau before you.

Mr. SHRIVER. No; the findings in the valuation, no; I have not.

Senator CUMMINS. And the figures that you have given us with regard to the rate of return of these several systems, are based upon the assumption that the property that has been taken over by the Government is worth the book value of the investment account.

Mr. SHRIVER. I do not intend—did not intend to make any assumption at all as to the actual value of these properties.

Senator CUMMINS. You did not?

Mr. SHRIVER. No; and the returns are shown relatively. That is, I don't think it makes—for the purposes of the discussion—it makes any difference whether the exact property value, real value, was more or less than the figure here given as "Property Investment."

Senator CUMMINS. Well, if it should happen that the property which is represented on the books of these several system, and which at the close of the year 1917 was \$7,226,424,426, was in fact worth \$2,000,000,000 less than that, the rate of return would be very much greater, of course.

Mr. SHRIVER. If you were to eliminate that, of course, the percentage return would be greater but it would simply mean that this railroad capital had been getting a higher return, but it would not mean anything with respect to the future allowance based on past earnings.

Senator CUMMINS. I am not, of course, even suggesting what the return should be; but in order to make this table of value to us, or of great value to us, we must assume that the property which has been taken over by the Government is worth the sum of money which you fix in the table.

Mr. SHRIVER. I did not understand that the suggestion of compensation was based at all with respect to the values, but simply based with respect to the relative earnings at a certain period.

Senator CUMMINS. Your purpose, of course—I am not depreciating it at all, because it is a very worthy purpose in coming before the committee—is to show us that the rate of return proposed in the bill and by the President is 5.33 per cent.

Mr. SHRIVER. On this particular basis.

Senator CUMMINS. And, of course, that must be bottomed upon the hypothesis that your property is worth \$7,226,424,426.

Mr. SHRIVER. Personally, I believe that when we get down to a valuation we would find that that was not much out of the way, but that is simply an opinion. But even so, these properties through their history and at this date had a certain earning value. Now, whether you call that six fifty-four upon the investment or as we find it, five thirty-three, I do not see as it would affect any relative difference, excepting this, that the property added in this period, up to December 31, 1917, is actually an addition of dollars and cents in property.

Senator CUMMINS. It does not make a particle of difference, of course, with regard to the amount. It does not affect the amount which the Government proposes to guarantee in this bill, but it affects very greatly the rate which that guaranty will pay upon any given value of property. That is, you have just said if the property were worth \$9,000,000,000, the rate would be very much less. If it were worth \$1,000,000,000, the rate would be very much more—the rate of return that this guaranty will give.

Mr. SHRIVER. That is so; but I have here, if you will be interested, a compilation showing the exact return which this capital would have.

Senator CUMMINS. Let me ask you another question. I assume you are not familiar with the capitalization of all of these 38 systems?

Mr. SHRIVER. Not at all.

Senator CUMMINS. Probably you have not been called upon to look into that subject, but permit me to ask you what is the capitalization

of the Baltimore & Ohio Railroad, divided, of course, into its obligations, its common stock and its preferred stock?

Mr. SHRIVER. The stock outstanding in the hands of the public totals \$151,940,000 common stock; preferred stock, \$58,863,181, or a total capital stock of \$210,808,775. That is the outstanding capital. The total funded debt as of December 31, 1916—the total funded debt, direct obligations and assumed obligations, \$422,408,123, or a total of capital obligations of \$633,216,898.

Senator CUMMINS. That does not include any short time obligations?

Mr. SHRIVER. That does not include—well, it includes all the short time paper that was out at that time, but that has been increased during this year by the expenditures that I have referred to.

Senator CUMMINS. How much more is that than the investment account at the same time?

Senator McLEAN. The investment is \$567,845,511 in 1917.

Senator CUMMINS. Your investment account as shown by this table?

Mr. SHRIVER. The total investment in railroad property—not the total of all investment, but the investment in the railroad property—that is, in this particular railroad property—is \$559,609,920.

Senator CUMMINS. Now, what is the investment account or value of the remainder of the property represented by this capitalization?

Mr. SHRIVER. That is the difference between the \$559,000,000 and the—I think I would have to go back to the total obligations of the company—that is, the total footings of the balance sheets, which are \$712,577,000.

Senator CUMMINS. Are you speaking now of investment account?

Mr. SHRIVER. Of all accounts. That is, \$712,557,000 represent the total of the account of the assets of the road. The total assets are \$712,000,000. The railroad property investment, as I have stated in this, is \$559,964,553.

Senator CUMMINS. That is the operating investment

Mr. SHRIVER. That is the railroad investment, leaving \$152,612,992 as their investment.

Senator CUMMINS. Now, the capital stock that you have mentioned represents all of this property?

Mr. SHRIVER. All of the property, yes.

Senator CUMMINS. What is the difference, then, between your capitalization and the investment account of all your property?

Mr. SHRIVER. Roughly, \$79,000,000.

Mr. THOM. Which is the greater?

Senator CUMMINS. Now, you do not understand, do you, that the Government is taking over anything but your operating property?

Mr. SHRIVER. I assume that the suggestion is to take over the railroad operating property only.

Senator CUMMINS. Leaving, of course, your company in possession—

Mr. SHRIVER. Of handling any other of the corporate assets, not included in the \$559,000,000, except an asset which the railroad has and which at least for the present is being used by the Government, covering the materials and working balances. For instance, \$25,000,000 of that \$79,000,000 is represented in cash invested in materials on hand, held in the storehouse, and cash balances in the

hands of agents, and in the turnover of the pay rolls, and working fund generally. In other words, there is \$25,000,000 of cash capital. That item stands out alone. There might be other items in addition to that, which would be added to the \$559,000,000, making a total, say, of \$584,000,000 of property and capital, which at least for the present is being utilized in the interests of Federal operation.

Senator CUMMINS. And upon the basis of this bill, what would be the guaranteed income to your company?

Mr. SHRIVER. About 4½ per cent, roughly.

Senator CUMMINS. I mean the aggregate amount?

Mr. SHRIVER. Oh, dollars and cents?

Senator CUMMINS. Yes.

Mr. SHRIVER. \$26,024,000. Oh, I beg your pardon; we are to get the average?

Senator CUMMINS. You have taken the last year.

Mr. SHRIVER. I have taken the last year. We would get \$25,694,000 as our guaranteed income.

Senator CUMMINS. Have you compared that guaranteed income for your company with the guaranteed income of other companies?

Mr. SHRIVER. You mean as to whether it was greater or less?

Senator CUMMINS. Yes; I mean we are trying to find out how this will operate. Now, you say that it would give you \$25,000,000 and a little more, compensation for property which upon your books is worth nearly \$600,000,000, if not quite. Now, have you compared what it would be if other companies were on the same basis?

Mr. SHRIVER. That is comparable here (referring to Shriver Exhibit B) in this three-year average. The Baltimore & Ohio would get on its property, without taking into account the \$25,000,000 I have referred to as working capital, 4.63 per cent, and the column on this statement headed "Rate of return, three-year average" shows the relative returns of other roads to their property investment.

Senator CUMMINS. Now, if the investment account does show the value of the railway property really, why should not the return upon it be the same with all roads?

Mr. SHRIVER. The mere fact that you spent a dollar in one place does not mean it will be as productive as a dollar spent somewhere else.

Senator CUMMINS. That is what we are taking possession of the properties for, the general good of the country, and if there is a property anywhere in which there has been invested a certain sum of money, and which the Government finds it necessary to take in order to carry on its affairs, why should we not pay the same rate of return upon that property that we pay upon anybody else's property?

Mr. SHRIVER. Well, I think it might be a very good thing for the railroads if that were done; but, for instance, we know that we have certain main lines that are productive and earn very much more than 4.63 on their actual cost, but we have certain branch lines we are required to operate, although they do not even return their operating expenses, operating perhaps at 110 per cent of their revenue. Those roads are just as essential to the communities which those branch lines serve and are just as important to them, and the money went in to build them just the same, but they are not productive at all in this item, yet the railroad company has to carry them. If we could get an

equitable rate of return on all this property regardless of its productivity it would be very acceptable.

Senator CUMMINS. That accounting of the comparison between branch lines and main line—that is a mere matter of bookkeeping, is it not?

Mr. SHRIVER. I think that is a matter of fact.

Senator CUMMINS. Well, you have the authority if you own the line to give to the branch line any proportion of the through earnings that you may see fit to apportion to it.

Mr. SHRIVER. Well, if we had a branch line, for instance, where it was doing business, contributing \$1 of revenue on each ton of freight; that is, if the entire freight was a dollar it would hardly be a fair proposition to allow that branch line a full dollar and haul the traffic over to the balance of the line at no compensation.

Senator CUMMINS. I did not suggest that. It is with you to make the apportionment, whatever it may be. You make the apportionment.

Mr. SHRIVER. Where we do any apportioning between lines at all we endeavored to apportion the revenue with due regard to the haul over the lines on which the business is handled.

Senator CUMMINS. Do you apportion it according to the length of the haul over the branch line and the main line? That would bankrupt every branch line in the country, would it not?

Mr. SHRIVER. I think most branch lines do not earn operating expenses.

Senator CUMMINS. Now, formerly, you know, railroads gave the branch lines something like 40 per cent of the earnings, whether originating on branch lines or destined to the branch lines. Some 20 years ago, or 25, they cut them down to 25 per cent, did they not, mainly—

Mr. SHRIVER. Where we apportion between branch lines—and the only cases in which we do it are where there is some outside stock interest in it—those apportionments are usually made on the customary basis; that is to say, division based on 50-mile blocks, or something of that kind. It would be an equitable division of the earnings as between the main line and the branch line.

Senator CUMMINS. If you owned all of the stock of the branch line, and if it is another company that holds the title, it does not make any difference to you what apportionment you make?

Mr. SHRIVER. No; it does not.

Senator TOWNSEND. You did not quite complete, a little while ago, an answer to a question that Senator Cummins asked you that I was interested in. I understood you to say it did not make any difference as to the value of the property—that is, whether it was a book value or a stock value, or any other value, as to the compensation that you received?

Mr. SHRIVER. I meant under the bill. I don't think it does, because you start with, say, 1915 as a base or 1914 as a base. Now, whatever the property was at that time, whether it be six billion or seven billion, is the base. Whatever is added since then becomes a factor, and it is important to know whatever increase appears since then as a real additional investment; the relative return would only be affected by actual additions of new investments after July 1, 1914.

Senator TOWNSEND. And your contention is that you are entitled under the law to the compensation which you were receiving at the time the Government took the roads over?

Mr. SHRIVER. I think it would be a fair proposition to take the full, fair earnings of the property at the test period and apply it to the property at the time the Government took it over.

Senator UNDERWOOD. You are discussing this question from the standpoint of temporarily taking, are you not, Mr. Shriver?

Mr. SHRIVER. Excuse me, Senator, but I did not get your question.

Senator UNDERWOOD. I say you are discussing this question of compensation from the viewpoint of a temporary taking over?

Mr. SHRIVER. That has been my thought only.

Senator UNDERWOOD. And not from the standpoint of a permanent acquisition by the Government?

Mr. SHRIVER. Certainly not.

Senator UNDERWOOD. And your viewpoint is that if the Government is paying a rental for the use of the property during the war, that the just value of that rental should be commensurate with the earning capacity of the road at the time of taking?

Mr. SHRIVER. That is, it should have a relation to the present property and have a relation to the present times.

Senator UNDERWOOD. The net earning capacity at the present time?

Mr. SHRIVER. Yes; when its business is at a maximum and when it probably will continue at a maximum. As far as we can see there is every prospect that the roads will be called upon to do all the business they possibly can in the next year, or two or three.

Senator UNDERWOOD. In other words, you want to approximate in an agreement with the President what probably would be the finding of a court if you had to go into a court to sue for it?

Mr. SHRIVER. I think we would much prefer to arrive at such an understanding amicably.

Senator UNDERWOOD. I say what you are seeking is to have the basis of compensation for agreement with the President adjusted on the same lines that you probably would receive if you were forced to go into the courts to sue.

Mr. SHRIVER. I think that is right; yes.

Mr. THOM. Mr. Chairman, would this be a convenient time for me to get in this information that I want?

Senator KELLOGG. May I ask one question there? I did not understand the question Senator Cummins asked you, but as near as I could understand, you stated that to the net operating income of the 38 roads in 1917 of \$406,461,566 must be added about \$51,000,000 of corporate income?

Mr. SHRIVER. Yes, Senator.

Senator KELLOGG. And that that would be available for interest and dividends of the road?

Mr. SHRIVER. That is right.

Senator KELLOGG. The corporate property is not included in the \$7,116,424,426, is it?

Mr. SHRIVER. No; it is excluded from that calculation.

Senator KELLOGG. Well, is the \$51,000,000 net, after paying interest on the corporate property?

Mr. SHRIVER. No; it is not. That has not been accounted for.

Senator KELLOGG. Then the \$51,000,000 would not be applicable to paying interest upon the property investment of \$7,116,424,426, would it?

Mr. SHRIVER. No; it would go, of course, to carrying the other investment first, and I might say from the Baltimore & Ohio standpoint, that there are other investments bringing in a larger proportion of return than the railroad investment, and so the other investments have in the past contributed something toward carrying the railroad, not the railroad contributing anything toward carrying the other corporate property.

Senator KELLOGG. Do you know what the corporate properties of all the 38 roads was in 1917?

Mr. SHRIVER. I could only approximate that by taking their total. Well, it would not be—I have not got the detail of their balance sheets, and as a matter of fact their total capital is very nearly the total property investment.

Senator KELLOGG. That is all.

Mr. THOM. Mr. Chairman, I want to put in some data here. Mr. Shriver, we have been treating this question of what the roads are entitled to as a question not of percentages, but of the amount that was a just value of the use of the property. Now, we have used certain percentages. Those percentages were used for the purpose of comparison, were they not?

Mr. SHRIVER. That was the purpose of the percentages.

Mr. THOM. Being used for the purpose of comparison, it does not make any difference what the property investment is because that is constant in the comparison.

Mr. SHRIVER. That is right; constant with the exception of the additions.

Mr. THOM. I understand that. We have also talked about the amount of new investment made during the period in which the standard return is estimated, and also the amount of investment added each year, but leaving that out for the moment I would like you to state the list of the 38 roads and eliminating the details of the account, as to which I understand, as stated on this paper, there is some slight error, and state how that percentage as to each one of these roads compares with the net operating income of present property investment during other years—just those three columns, the name of the road, the percentage, and how it compares with other years.

Mr. SHRIVER. The Ann Arbor road 3.4 per cent operating income percentage on the property investment, or lower than the years 1903, 1905, 1906, 1907, 1916, and 1917.

The Baltimore & Ohio at 4.48 per cent is lower than the years 1903, 1904, 1905, 1906, 1907, 1909, 1910, 1911, 1912, 1913, 1916, and 1917.

The Bessemer & Lake Erie Railroad, 9.30 per cent, is lower than 1907, 1910, 1912, 1913, 1916, and 1917.

The Boston & Maine, 4.75, is lower than 1903, 1905, 1906, 1907, 1909, 1910, and 1916.

The Buffalo & Susquehanna, 5.34 per cent, is lower than 1903, 1916, and 1917.

The Buffalo, Rochester & Pittsburgh, 5.34 per cent, is lower than 1903, 1916, and 1917.

The Central of New England, 5.72 per cent, is lower than 1903, 1904, 1905, 1906, 1907, 1908, 1909, 1910, 1911, 1912, 1913, 1914, 1916, and 1917.

The Central Railroad of New Jersey, 9.01 per cent, is lower than 1903, 1904, 1905, 1906, 1907, 1908, 1909, 1910, 1911, 1912, 1913, 1916, and 1917.

The Chesapeake & Ohio, at 5.50 per cent, is lower than 1906, 1910, 1916, and 1917.

The Chicago, Indianapolis & Louisville, 4.03 per cent, is lower than 1903, 1904, 1905, and 1917.

The Cincinnati, Hamilton & Dayton, at 3.77 per cent, is lower than 1903, 1904, 1905, and 1917.

The Coal & Coke Railroad, 3.38 per cent, is lower than 1904, 1911, 1912, 1913, 1914, 1915, and 1916.

Mr. THOM. Mr. Chairman, that will illustrate what I am after. I just ask that the witness may put the table in, in full.

The ACTING CHAIRMAN (Senator Pomerene). Without objection, so ordered.

(The tables referred to are printed in full on pages 372-377.)

Mr. SHRIVER. With your permission, I would like to explain that this tabulation is slightly out of balance with the other statements which I have submitted, but not enough to affect the results at all.

Mr. THOM. I have eliminated all of that.

The ACTING CHAIRMAN (Senator Pomerene). Is there anything further with Mr. Shriver? If not, some of the members of the committee suggest an executive session, and I think perhaps we might consider the open session adjourned.

(Whereupon, the committee adjourned until to-morrow, Thursday, January 10, 1918, at 10 o'clock a. m.)

GOVERNMENT CONTROL AND OPERATION OF RAILROADS.

THURSDAY, JANUARY 10, 1918.

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE COMMERCE,
Washington, D. C.

The committee met, pursuant to the adjournment of yesterday, Senator Ellison B. Smith (chairman), presiding.

The CHAIRMAN. The committee will come to order. Mr. Thom, who is your first representative?

Mr. THOM. Mr. Shriver has some tables that he wishes to put in evidence in connection with his testimony of yesterday, Mr. Chairman.

The CHAIRMAN. Without objection, that will be incorporated.

Mr. THOM. And he wishes to make an explanation in connection with it.

The CHAIRMAN. Very well.

STATEMENT OF MR. GEORGE M. SHRIVER—Resumed.

Mr. SHRIVER. I desire to submit statement marked "Shriver Exhibit F" and "Shriver Exhibit G."

(The statement referred to is here printed in full, as follows:)

SHRYVER EXHIBIT F.

Statement of property investment, capital obligations and income, based on average net operating income rate of return 5 years ended June 30, 1917, applied to property investment June 30, 1917—58 systems, eastern districts.

[The net operating income shown herein (column 3) is arrived at by scaling up the earnings of the 3 years—June 30, 1915, 1916 and 1917, taken as test period—to the property investment at June 30, 1917, affording the property at that date the same return as the average return for the 3 years, and takes no account of additional investment to Dec. 31, 1917, which is shown, however, in footnote.]

	Property investment, June 30, 1917.	3-year average rate of return on 3-year average property investment.	Net operating income after applying average rate of return for 3 years to property investment.	Other income, year 1917.	Total income adjusted.	Charges, year 1917.	Net corporate income based on average net operating income.	Dividends paid, year 1917.	Surplus over dividends.	Total capital obligations, year 1917.	Per cent surplus to total capital obligations.
Ann Arbor.....	\$17,520,864	3.06	\$536,138	.....	\$536,138	\$533,352	\$182,786	.....	\$182,786	\$15,298,472	1.19
Baltimore & Ohio.....	567,845,511	4.63	26,291,247	.....	30,272,326	17,033,196	12,339,130	.....	2,337,455	642,580,035	.37
Bessemer & Lake Erie.....	51,000,776	10.20	5,202,079	94,122	5,296,201	1,261,168	4,035,033	1,419,966	2,615,067	38,128,850	6.86
Boston & Maine.....	206,589,121	4.80	9,916,278	404,705	10,320,983	8,261,900	2,059,383	.....	2,039,383	199,359,368	1.02
Buffalo & Susquehanna.....	10,631,234	4.36	463,522	185,560	649,082	272,286	376,796	335,000	21,796	13,421,800	.16
Buffalo, Rochester & Pittsburgh.....	57,210,215	5.76	3,306,750	73,257	3,380,007	1,784,873	1,595,134	980,000	605,134	45,657,000	1.33
Central New England.....	26,688,225	5.67	1,513,222	126,326	1,639,548	707,595	779,301	200,216	670,085	25,946,100	2.20
Central R. of New Jersey.....	106,165,883	9.37	9,947,743	507,202	10,454,945	4,992,952	5,461,993	3,333,963	2,108,827	75,489,800	2.79
Chesapeake & Ohio.....	238,866,800	5.73	13,687,068	1,042,337	14,729,405	8,983,568	5,045,847	2,511,264	3,534,583	247,833,881	1.43
Chicago, Indianapolis & Louisville.....	40,541,663	4.09	1,658,154	160,883	1,819,037	1,038,117	760,920	540,798	220,122	36,092,490	.61
Chicago, Terre Haute & Southeastern.....	24,707,269	3.75	926,523	13,809	940,332	799,102	141,230	.....	141,230	23,214,055	.61
Cincinnati, Hamilton & Dayton.....	14,197,496	1.88	774,723	115,166	889,889	1,029,000	139,111	.....	139,111	78,741,781	1.18
Cincinnati, Indianapolis & Western.....	8,315,625	3.00	426,925	10,446	436,371	190,960	245,411	.....	245,411	14,471,798	1.70
Coal & Coke.....	116,221,171	3.43	286,226	137,777	423,003	277,460	145,543	.....	145,543	23,071,317	.63
Delaware & Hudson.....	208,964,671	6.85	7,961,180	2,049,458	10,010,638	3,436,271	6,574,317	5,014,362	1,560,955	128,386,500	1.22
Delaware, Lackawanna & Western.....	208,964,671	7.98	16,675,381	6,404,955	23,080,336	3,834,952	19,245,384	11,166,612	8,078,742	140,993,238	5.73
Detroit & Mackinac.....	22,587,370	4.79	313,407	.....	313,407	90,566	222,841	147,500	75,341	5,250,000	1.44
Detroit, Toledo & Ironmont.....	475,965,049	3.96	216,839	4,338,751	216,839	74,708	142,131	.....	142,131	22,527,001	.63
Erie.....	46,737,807	3.57	1,691,962	14,494	21,330,733	13,461,973	7,868,730	565,604	7,303,126	464,215,803	1.57
Hooking Valley.....	6,315,481	6.07	2,780,285	6,401	2,786,686	1,200,207	1,586,572	.....	1,586,572	36,308,500	3.17
Lehigh & Hudson River.....	13,400,954	8.45	533,638	5,401	540,039	183,560	356,550	160,800	1,225,709	4,491,000	5.03
Lehigh & New England.....	201,339,391	8.96	11,134,095	27,782	11,161,877	380,890	847,627	480,000	387,627	13,245,000	2.78
Lehigh Valley.....	53,290,026	5.53	2,912,620	4,117,211	15,251,797	7,191,810	8,060,669	6,090,800	1,969,869	190,391,998	1.05
Maine Central.....	1,606,876,243	6.15	92,242,390	221,617	92,463,907	3,194,902	1,319,265	.....	1,319,265	1,486,377,777	7.79
New York Central.....	273,918,110	6.36	17,421,192	9,793,617	27,214,809	4,962,025	22,252,784	21,104,992	1,109,816	31,244,989	2.10
New York, Ontario & Western.....	28,766,472	2.37	2,163,768	141,472	2,305,240	1,428,446	6,268,019	1,711,570	4,556,449	453,818,271	1.90
New York, Ontario & Western.....	28,766,472	2.37	2,163,768	141,472	2,305,240	1,428,446	6,268,019	1,711,570	4,556,449	453,818,271	1.90
New York, Ontario & Western.....	28,766,472	2.37	2,163,768	141,472	2,305,240	1,428,446	6,268,019	1,711,570	4,556,449	453,818,271	1.90

Norfolk & Western.....	8.39	\$21,356,037	\$818,477	\$22,174,514	\$4,078,839	\$18,095,675	\$10,262,114	\$7,833,561	\$223,364,700	3.33
Pennsylvania system.....	5.04	87,541,517	12,784,645	100,326,162	31,491,449	69,724,713	40,214,015	29,510,698	1,316,060,088	2.21
Pere Marquette.....	4.10	3,468,320	113,364	3,581,684	3,496,061	75,112	.....	75,112	110,522,036	1.07
Pittsburgh & West Virginia.....	8.58	30,360,727	172,064	30,532,791	8,686,701	21,846,090	6,994,700	270,343	182,531,880	.46
Reading system.....	8.56	23,375,403	384,280	23,759,683	20,496,715	11,707,984	6,994,700	4,706,984	182,738,900	2.56
Rutland.....	1.72	1,033,145	81,280	1,114,425	1,099,374	14,509	179,088	49,078	49,862,000	1.01
St. Louis & Western.....	1.92	1,007,605	91,719	1,099,324	1,096,374	3,193	.....	1,536,509	48,364,899	4.06
Traverse.....	2.04	6,040,489	171,679	6,212,168	3,729,850	2,922,598	1,386,000	1,536,509	204,887,853	4.97
West Side Belt.....	3.48	1,174,412	7,349	1,181,761	2,73,528	1,091,943	.....	1,081,243	137,177,338	.80
Western Maryland.....	2.58	3,460,588	97,497	3,558,085	2,461,144	1,091,943	.....	1,081,243	137,177,338	.80
Wheeling & Lake Erie.....	2.23	1,701,101	86,468	1,787,569	1,562,882	233,717	.....	233,717	80,746,473	.29
Total.....	5.54	394,591,207	51,792,787	446,383,994	202,462,009	243,921,985	126,095,910	117,826,075	6,974,232,466	1.69

¹ Deficiency.

² New York Central lines include N. Y. C. & St. L., Kanawha & Michigan, and Dayton & Union.

Additional investment, six months to Dec. 31, 1917 (partly estimated).....	5.54	\$6,094,000	\$110,000,000	5.54	\$6,094,000
Total to Dec. 31, 1917.....		400,685,207	7,226,424,426		

SHRIVER] EXHIBIT G.

Combined statement of 38 systems—Eastern District.
SUMMARY OF REVENUES AND DISPOSITION.

Year.	Mileage.	Total capital obligations.		Property investment.		Total operating revenue.	Total operating expenses.	Ratio of expenses to revenue.	Net operating revenue.	Tax accruals.
		Amount.	Return.	Amount.	Return.					
1903.	54,383.01	\$4,410,515,792	Per cent.	\$4,400,400,311	Per cent.	\$871,941,834	\$855,916,097	Per cent.	\$286,025,137	\$25,968,847
1904.	55,444.23	4,720,847,184	5.76	4,599,134,583	5.53	902,211,366	621,950,378	67.20	280,260,988	27,770,273
1905.	56,224.38	4,981,831,071	5.25	4,788,302,878	5.32	946,556,845	642,804,266	68.94	303,752,579	27,226,883
1906.	56,974.71	5,335,084,449	5.45	5,016,827,089	5.57	1,047,590,720	699,550,104	67.91	347,740,616	33,834,070
1907.	57,544.46	5,664,087,205	5.76	5,266,796,951	6.08	1,143,105,737	782,701,014	68.47	360,404,723	34,451,669
1908.	58,081.72	5,852,094,089	5.06	5,466,992,068	6.02	1,097,689,129	789,387,546	71.10	317,241,583	36,421,583
1909.	58,188.11	5,919,798,648	5.39	5,555,912,661	5.33	1,086,272,208	739,302,921	68.06	346,969,287	39,266,139
1910.	58,421.98	6,199,329,650	6.14	5,828,767,319	6.05	1,240,649,010	835,639,453	67.36	405,009,557	43,077,331
1911.	58,838.76	6,377,405,737	5.23	6,151,783,755	5.05	1,253,585,287	890,878,191	70.78	367,710,096	46,452,240
1912.	59,362.75	6,464,264,653	5.30	6,306,907,004	5.02	1,297,141,490	918,391,183	70.80	378,750,337	51,354,516
1913.	59,664.06	6,572,890,731	5.57	6,501,134,708	5.19	1,429,336,080	1,026,148,176	71.79	403,187,854	57,948,949
1914.	60,008.79	6,703,890,206	4.17	6,714,376,811	3.88	1,383,275,189	1,046,460,583	76.92	332,814,539	57,555,222
1915.	60,148.71	6,879,927,431	4.53	6,804,462,904	4.33	1,323,020,253	952,125,714	71.97	370,894,539	60,683,997
1916.	60,118.04	6,853,267,303	6.89	6,916,147,930	6.53	1,595,611,830	1,056,085,344	66.19	539,523,486	71,775,008
1917.	60,330.96	6,974,232,466	6.18	7,116,424,426	6.71	1,749,948,134	1,266,991,219	70.69	512,956,915	
Fifteen-year average.	58,248.96	5,993,983,980	5.50	5,834,962,026	5.36	1,224,791,871	854,876,715	69.77	370,216,156	44,613,511

NOTE.—From the surplus after dividends is to be deducted before reaching final surplus, losses, discounts, certain additions, and betterments, etc.

Year.	Hire of equipment, joint facilities, rents, and miscellaneous (net).	Net operating income.	Other corporate income.	Gross corporate income.	Total interest and miscellaneous deductions.	Net corporate income.	Dividends.	Surplus.	Per cent surplus to total capital obligations.
1903.....	Dr. \$9,824,224	\$261,332,065	\$26,218,719	\$276,550,784	\$128,304,295	\$148,246,489	\$69,831,635	\$78,414,854	1.78
1904.....	Dr. 7,835,981	244,654,734	25,543,367	270,198,101	131,190,339	139,007,762	80,071,439	58,986,323	1.26
1905.....	Dr. 9,646,617	266,880,079	28,497,234	295,377,313	140,288,218	155,089,095	91,744,244	63,344,851	1.27
1906.....	Dr. 8,832,881	306,073,665	31,111,421	336,185,086	146,312,734	187,872,352	94,868,085	93,004,267	1.74
1907.....	Dr. 6,027,443	318,926,611	35,986,480	354,912,091	165,970,639	188,941,452	107,712,547	81,228,905	1.43
1908.....	Dr. 5,154,104	275,665,826	43,527,892	319,193,718	171,302,100	147,891,618	102,292,723	45,598,895	.78
1909.....	Dr. 11,997,133	296,008,015	45,648,987	341,654,972	174,143,682	167,511,290	100,033,353	67,477,937	1.14
1910.....	Dr. 9,274,050	332,658,176	50,275,610	402,933,786	174,652,268	228,274,578	137,525,145	90,749,483	1.46
1911.....	Dr. 10,766,893	310,490,963	48,603,143	359,094,106	179,643,792	179,450,314	123,100,968	56,349,316	.88
1912.....	Dr. 11,076,729	316,316,092	49,799,476	366,115,568	179,439,785	186,675,783	149,433,532	37,242,251	.58
1913.....	Dr. 10,976,164	337,474,829	53,771,961	391,246,790	185,841,436	205,405,354	130,021,605	75,383,749	1.15
1914.....	Dr. 14,320,751	280,544,836	48,906,251	309,451,187	190,857,514	109,593,673	118,908,640	19,314,967	1.14
1915.....	Dr. 17,540,928	285,998,390	44,313,485	340,311,875	205,934,837	134,377,038	117,212,347	17,164,691	2.52
1916.....	Dr. 27,402,056	451,467,433	47,759,657	499,217,090	208,862,707	290,354,383	117,598,137	172,756,246	2.82
1917.....	Dr. 34,720,342	406,461,565	51,792,787	458,254,352	204,451,992	253,802,360	126,095,909	127,708,451	1.83
Fifteen-year average.....	Dr. 12,889,963	312,662,862	42,050,429	354,713,121	173,213,552	181,499,569	111,096,689	70,402,880	1.17

1 Deficit.

Mr. SHRIVER. Gentlemen, the subject turned yesterday on the question of net corporate income of these carriers, and that is a subject that I have not enlarged on particularly, because of the fact that as I understand it the bill is treating practically with what you might call a lease of these railroads, and it seemed to me to turn more on the question of the earnings of the particular railroad properties that were to be taken over, rather than on the corporate operations of these companies.

However, as there was some interest displayed in the question of net corporate income and its application, I have made some compilations showing the net income of these carriers and its disposition, as follows:

<i>Income of 38 systems carried to final surplus averaged for 3 years, 1915, 1916, 1917.</i>	
Net operating income.....	\$384,840,150
Add other income.....	47,955,310
Total income.....	432,795,460
Total deductions.....	206,416,512
Net income.....	226,378,948
Less dividends.....	120,302,131
Balance.....	106,076,817
Less discount on securities sold, losses, etc.....	21,086,983
Available.....	84,989,834
Applied in additions and betterments.....	34,269,029
Leaving balance of unappropriated surplus.....	50,720,805
Per cent on capital stock (\$2,757,977,028), 1.81.	
Per cent on total capital obligations (\$6,902,475,733), 0.72.	

The net corporate income is the operating income from the rail operations, plus the income from the other investments and other industries that a railroad may happen to be engaged in. That being the earnings of the entire capital, it relates rather to the capital obligations of the corporations than to the property investment of the railroad alone.

For the years 1915, 1916, and 1917, which are under question, the average of total obligations, that is, the total of bonds and stock on these properties, aggregates \$6,902,475,735.

The CHAIRMAN. You do not have that in this table that you submitted.

Mr. SHRIVER. No; not in that form; not for the three-year average. The gross corporate income for the same period, the same three years, averages \$432,594,439, as compared with the earnings on these railroads of \$384,840,150. That is, the railroad earnings were \$384,840,000, and the total earnings of the corporation were \$47,754,000 greater, the final result.

Now, after charging the interest and miscellaneous deductions, which are rents for other outside property and other items, aggregating \$206,416,312, we get to the net income applicable on the common stock; that is, the earnings on the stock of these roads. The stock of these roads averages for the three years \$2,757,977,028 and the final net result of income earned for that stock is \$226,177,927.

The CHAIRMAN. That is inclusive of the outside industries as well as their operating income?

Mr. SHRIVER. That includes all the earnings of these corporations. That is the net result to the stockholders from the operation of both railroad properties and any other industries they may be engaged in.

It might be interesting to follow that \$226,000,000 of net income.

The CHAIRMAN. Before you go further, what per cent was that on your capital investment?

Mr. SHRIVER. On the stock of the company, that would be 8.2 per cent, and appears to be reasonably large, but, as I suggest, we should follow that \$226,000,000 to its ganality and we find that these corporations in these same three years applied \$120,302,000 of that earning to dividends, or a sum equal to 4.36 per cent of this stock, that is, the average dividends paid were 4.36 per cent. That left a balance of \$105,875,976, from which there was a further deduction, some of which possibly if properly accounted for would have gotten back into your operating expenses.

There are occasional deferred expenses or losses, a fire or other calamity, involving expenses so large that they would distort the ordinary year's operations, it is charged to profit and loss.

In addition to that, by charging the discounts on money borrowed, to that account, you are anticipating, really, the interest, and if it was not so charged here would have made the interest charges during this three-year period larger. That is, if the final result which apparently went to the stockholder had not been applied in discounts on bonds sold, he would have had an apparently better return. The discounts in this period were \$21,686,983, leaving the balance available on the capital stock as an earned surplus for that period an average of \$84,188,813.

Out of that \$84,000,000 these carriers expended an average in additions and betterments of \$34,269,629. Additions and betterments that are ordinarily charged to the income or final surplus are such improvements as the elimination of grade crossings or the meeting the demand at times for stations where the present one might be considered ample, but for local reasons it has been necessary sometimes to provide them, and various other improvements the carrier might term unproductive investments. That also is charged against this income. That left an unappropriated surplus which is the final sum that might be said to be held as a reserve against maybe some other year when the dividends would not be earned, the final reserve that these carriers had which would be applicable to their stock was \$49,919,184, or a percentage on their total capital obligations of seventy-two one-hundredths of 1 per cent. That is, after these three-year operations, the average operation for three years, the final reserve surplus earned in that period was seventy-two one-hundredths of 1 per cent, and that represented the margin of safety which these carriers had in carrying this total obligation of \$6,902,000,000.

The CHAIRMAN. What was the total surplus that you had for incidental expenses that might occur? What was the surplus that you carried for that?

Mr. SHRIVER. You mean after taking out the discounts and losses?

The CHAIRMAN. Yes.

Mr. SHRIVER. That balance was \$84,188,000.

The CHAIRMAN. The net surplus that you provided for?

Mr. SHRIVER. After deducting the additions and betterments.

The CHAIRMAN. Yes.

Mr. SHRIVER. Was \$49,919,000.

The CHAIRMAN. Is that surplus represented in these three years cumulative or is it used up within the period that you are anticipating?

Mr. SHRIVER. There has been a gradual accumulation with these carriers of some surplus; that is, they have more surplus now than they had 10 years ago.

Senator McLEAN. What was the average dividend paid?

Mr. SHRIVER. 4.36 per cent, the average for the three years.

Senator TOWNSEND. I do not quite understand your disposition of your discounts that you have made. Do you deduct those discounts out of surplus?

Mr. SHRIVER. It has been the practice on the Baltimore & Ohio Railroad, and I think with the roads generally, whenever we sold bonds, if there was a 1 per cent or a 2 per cent discount, and if we paid any commission in negotiating the debt, to charge that to profit and loss. In other words, we might issue bonds bearing 5 per cent interest, and, sold at a discount, the actual interest might have been $5\frac{1}{4}$ per cent, that is, if we amortize the discount through the life of the bond, the interest might have averaged $5\frac{1}{4}$ per cent. That discount representing the one-fourth per cent has been charged off in profit and loss, so that the carrier in the future has but the 5 per cent interest to pay. In other words, it has the effect of anticipating your interest and reducing the interest the future will pay. That has generally been considered the conservative method, and has been followed, I think, by a great many of these roads.

Senator TOWNSEND. That discount does not represent any actual cash payment of yours, does it, at any time?

Mr. SHRIVER. It represents this, that you have sold \$100,000 of bonds and having allowed 2 per cent discount on them you have gotten \$98,000 from the bankers. Now, if you put that into your property you will be paying interest on \$100,000 in the future, having only \$98,000 invested in the property; so the carrier, instead of doing that, makes up that \$2,000 out of surplus. The investment therefore that has gone into the property is 100 per cent, and the carrier or the stockholder has contributed sufficient to make up the discount out of his apparent earnings.

The CHAIRMAN. That is all that you desire to explain?

Mr. SHRIVER. I was now going to show how that affected the present proposition.

Senator CUMMINS. That makes it necessary, in order to make the showing complete, at least from my standpoint, to ask you this question: I will show you a table. The table to which I now refer has been offered in evidence, and it shows for the 38 systems a net operating income per cent of property investment of 5.71.

Senator POMERENE. Will you allow me to understand your question, Senator? You say a net income based on property investment?

Senator CUMMINS. Yes; that is the percentage of the net operating income as compared with the property investment, brought down to the 30th day of June, 1917.

Mr. SHRIVER. That is for the year to June 30, 1917, is it not?

Senator CUMMINS. That is the fiscal year 1917. That is right, is it not?

Mr. SHRIVER. The fiscal year 1917?

Senator CUMMINS. Yes; that is right, is it not?

Mr. SHRIVER. That is right.

Senator CUMMINS. The next column of this table shows the net income plus interest deduction—per cent of total capital obligations, 6.18. That is right, is it not?

Mr. SHRIVER. That is correct, sir.

Senator CUMMINS. Yesterday you showed that the percentage of net operating income, brought down and compared with the property investment on December 31, 1917, was 5.33 per cent.

Mr. SHRIVER. That is the average earnings for the three years to June 30, 1917, related to the property at December 31, 1917, gave a return of 5.33 per cent, as against this 5.71 for the year June 30, 1917?

Senator CUMMINS. Yes.

Mr. SHRIVER. Yes, sir.

Senator CUMMINS. Will you now give me a like figure representing the net income plus interest deduction—per cent of total capital obligations, brought down to the 1st of January, 1918?

Mr. SHRIVER. I can not do that, because I do not have the figures from the roads as to the period between January 30 and December 31.

Senator CUMMINS. You have nothing to show the amount of capital obligations issued after the 30th of June, 1917?

Mr. SHRIVER. I have not; no sir.

Senator CUMMINS. Your answer would be the same, I infer, then, so far as the next column is concerned, which is the net income per cent of capital stock outstanding.

Mr. SHRIVER. That is the same situation. These are the last official figures I have.

Senator CUMMINS. Can you furnish that without trouble?

Mr. SHRIVER. I would have to go to the roads to get it, but we will do that and submit a statement just as promptly as we can.

Senator CUMMINS. I would be very glad to have that information.

Senator KELLOGG. Senator, do I understand this that page 2 of volume 2 of the statements of property investment and net income account from 1903 and 1917 has been put in evidence?

Senator CUMMINS. I do not think it has.

Senator KELLOGG. I thought you said page was put in evidence.

Senator CUMMINS. Of these 38 systems?

Senator KELLOGG. Yes.

Senator CUMMINS. Oh, yes; it shows the investment account from 1900.

Senator POMERENE. Senator Cummins, I do not believe you put that in when Mr. Kruttschnitt was on the stand. He said he was not familiar with it, and you said you would identify it by some other means.

Senator CUMMINS. I think that is true. I remember now that that has not yet been introduced in evidence.

Senator POMERENE. It ought to be in. Senator Cummins knows that is a correct exhibit, and I suggest that it be admitted.

Senator CUMMINGS. Mr. Shriver knows that it is. Mr. Shriver wants to explain what may be an error in this sheet. If he desires to do it I will be very glad to have him do it.

(Mr. Shriver then filed a copy of the statement in question, entitled "Combined statement of 38 systems' property investment and income, years 1900 to 1917, inclusive," being page 2, volume 2, of Carriers Exhibit in Fifteen Per Cent Case.)

Combined statement of 38 systems—Property investment and income accounts, fiscal years 1900 to 1917, inclusive.

Fiscal year ending June 30—	Mileage owned.			Mileage operated.			Capital obligations outstanding.			Per cent capital stock is of total.
	First main track.	All main tracks.	All tracks.	First main track.	All main tracks.	All tracks.	Total capital obligations.	Capital stock.	Funded debt.	
1900.	47,445.69	57,804.19	79,687.03	50,866.62	61,702.14	85,053.35	\$2,940,536,154	\$1,800,827,010	\$2,139,709,144	45.70
1901.	48,253.98	58,949.80	81,852.55	51,990.21	63,340.98	87,993.95	4,087,890,949	1,790,935,151	2,296,965,798	44.14
1902.	48,996.61	60,160.40	84,170.15	52,533.61	64,366.30	90,155.68	4,210,227,983	1,873,721,465	2,336,565,578	44.50
1903.	50,778.09	62,536.71	86,445.46	54,383.01	66,866.34	93,948.29	4,410,518,792	1,973,780,068	2,436,738,724	44.75
1904.	51,456.66	63,990.09	91,456.03	55,444.23	68,908.36	97,607.81	4,720,847,184	2,076,451,762	2,644,355,422	43.98
1905.	51,996.31	65,317.55	94,031.08	56,224.38	70,702.78	100,272.78	4,821,821,071	2,114,062,962	2,867,758,109	42.44
1906.	52,598.65	66,503.20	96,536.28	56,974.71	72,187.52	103,673.24	5,333,684,449	2,149,635,076	3,184,049,373	40.30
1907.	53,191.59	67,952.62	99,189.46	57,544.46	73,709.05	106,369.37	5,664,087,205	2,273,985,190	3,390,102,105	40.15
1908.	53,606.76	69,141.44	101,352.73	58,081.72	74,998.02	108,614.67	5,862,894,089	2,265,774,320	3,686,819,769	38.71
1909.	53,835.68	69,545.40	102,866.31	58,188.11	75,476.70	109,733.66	5,919,798,648	2,259,921,035	3,659,877,613	38.18
1910.	53,983.45	70,050.76	103,739.38	58,421.98	76,116.23	111,333.98	6,194,329,650	2,477,219,305	3,722,110,345	39.96
1911.	54,429.48	71,914.92	106,112.82	59,838.76	77,573.14	113,621.16	6,377,405,787	2,612,843,048	3,764,562,689	40.97
1912.	54,734.60	72,403.16	107,982.02	59,362.75	78,771.62	115,893.45	6,464,284,653	2,611,117,209	3,853,167,444	40.39
1913.	54,926.96	73,166.73	109,643.80	59,664.08	79,688.20	117,884.71	6,572,880,731	2,682,424,026	3,910,456,705	40.51
1914.	55,114.95	73,752.23	111,317.87	60,008.79	80,457.77	119,684.11	6,703,530,206	2,677,694,768	4,026,886,438	39.94
1915.	55,299.42	74,090.20	111,992.11	60,148.71	80,921.08	120,562.77	6,879,927,431	2,701,843,547	4,178,083,894	39.27
1916.	55,152.42	74,078.91	112,619.49	60,118.04	81,052.13	121,307.66	6,953,267,303	2,765,637,538	4,087,639,765	40.35
1917.	55,364.65	74,408.25	113,492.99	60,390.96	81,273.03	122,060.82	6,974,232,466	2,806,460,000	4,167,772,466	40.24
Period averages:										
1900 to 1902.	48,233.09	58,971.46	81,903.24	51,776.81	63,136.47	87,734.33	4,069,531,885	1,821,827,855	2,247,703,840	44.77
1903 to 1905.	51,410.69	63,943.12	91,810.96	55,350.54	68,792.49	97,354.85	4,704,386,682	2,054,764,931	2,649,680,752	43.68
1906 to 1908.	53,162.33	67,866.76	99,026.16	57,533.63	73,630.86	106,219.09	5,167,786,611	2,229,786,195	3,386,990,416	39.70
1909 to 1911.	54,076.20	70,383.69	104,072.84	58,432.95	76,388.69	111,699.60	6,165,511,345	2,449,994,463	3,715,516,862	39.74
1912 to 1914.	54,926.80	73,107.37	109,647.90	59,678.83	78,638.53	117,817.09	6,586,245,580	2,650,412,001	3,929,530,529	40.28
1915 to 1917.	56,268.83	74,182.45	112,701.43	60,196.24	80,162.06	121,267.08	6,902,475,753	2,757,977,028	4,144,086,706	39.96
1902 to 1906.	50,807.92	63,001.19	89,525.68	54,646.31	67,685.95	95,677.33	4,590,883,758	2,009,504,049	2,571,349,708	43.87
1906 to 1909.	53,330.67	68,265.67	99,861.20	57,667.25	74,092.32	107,102.74	5,692,541,120	2,237,328,905	3,455,212,515	39.30
1910 to 1913.	54,513.62	71,793.89	106,869.51	59,071.86	78,034.90	114,960.58	6,403,475,193	2,590,900,897	3,812,574,296	40.46
1914 to 1917.	55,230.36	74,074.90	112,355.54	60,151.63	80,924.00	120,890.84	6,862,761,852	2,737,906,463	4,114,843,388	39.95
1903 to 1907.	50,004.46	65,260.03	93,931.66	56,114.16	70,454.81	100,439.25	5,022,191,758	2,117,583,012	2,904,068,747	42.16
1908 to 1912.	54,181.63	70,539.13	104,016.05	58,578.66	76,898.74	110,564.18	6,162,682,565	2,545,374,963	3,717,307,572	39.68
1913 to 1917.	55,168.68	73,893.26	111,813.19	60,064.11	80,678.04	120,286.01	6,767,777,627	2,722,809,978	4,073,967,652	40.06
1900 to 1917.	52,946.11	68,076.47	99,777.07	57,170.28	73,778.17	107,001.96	5,673,041,963	2,327,462,412	3,345,066,142	41.03

Fiscal year ending June 30.	Property investment. ¹		Rate of return.		Per cent dividends are of capital stock outstanding.	Operating ratio (per cent).	Average receipts per—	
	Total.	Additions during the year.	Net operating income—per cent of property investment.	Net income plus interest deductions—per cent of total capital obligations. ²			Ton-mile (cent).	Passenger-mile (cents).
1900.....	\$4,008,422,530	.....	5.20	5.08	2.94	84.62	0.584	1.838
1901.....	4,164,118,879	\$155,696,349	5.35	5.33	3.17	84.82	.610	1.842
1902.....	4,253,463,963	89,344,984	5.54	5.51	3.18	85.50	.626	1.816
1903.....	4,460,460,311	206,996,448	5.63	5.76	3.54	87.20	.649	1.861
1904.....	4,696,134,882	138,674,271	5.32	5.25	3.86	88.94	.664	1.866
1905.....	4,789,802,878	190,168,286	5.37	5.45	4.34	87.91	.645	1.815
1906.....	5,016,827,089	227,524,211	6.06	5.84	4.41	86.81	.626	1.842
1907.....	5,266,796,951	279,969,862	6.02	5.76	4.74	88.47	.633	1.811
1908.....	5,466,962,058	170,186,107	5.04	5.06	4.51	71.10	.631	1.770
1909.....	5,555,912,661	88,920,903	5.23	5.30	4.43	88.08	.631	1.782
1910.....	5,626,781,310	252,854,688	6.05	6.14	5.53	87.36	.635	1.768
1911.....	6,151,785,755	322,016,436	5.05	5.23	4.71	70.78	.627	1.802
1912.....	6,305,907,004	154,123,249	5.02	5.30	5.72	70.80	.623	1.809
1913.....	6,501,134,708	196,227,704	5.19	5.57	4.88	71.79	.619	1.822
1914.....	6,714,375,811	213,241,103	3.88	4.17	4.09	75.92	.620	1.821
1915.....	6,898,909,371	94,533,560	4.35	4.53	4.97	71.97	.627	1.860
1916.....	6,921,835,242	112,475,871	6.52	6.89	4.25	66.19	.627	1.905
1917.....	7,121,776,144	200,860,802	5.71	6.18	4.49	70.69	.632	1.915
Period averages:								
1900 to 1902.....	4,142,001,757	.....	5.37	5.31	3.23	85.00	.607	1.831
1903 to 1905.....	4,616,296,257	.....	5.51	5.48	3.92	88.02	.652	1.843
1906 to 1908.....	5,260,205,366	.....	5.70	5.64	4.56	88.82	.631	1.806
1909 to 1911.....	5,845,467,912	.....	5.47	5.59	4.91	88.77	.627	1.778
1912 to 1914.....	6,507,136,174	.....	4.68	5.01	5.01	72.87	.620	1.817
1915 to 1917.....	6,950,680,252	.....	5.53	5.87	4.36	66.51	.629	1.985
1902 to 1905.....	4,525,560,409	.....	5.52	5.49	3.84	87.46	.646	1.837
1906 to 1909.....	5,324,132,190	.....	5.60	5.50	4.52	88.63	.631	1.795
1910 to 1913.....	6,196,896,197	.....	5.31	5.55	5.21	70.25	.623	1.801
1914 to 1917.....	6,891,611,642	.....	5.13	5.45	4.38	70.98	.637	1.876
1908 to 1917.....	4,832,504,362	.....	5.74	5.62	4.20	87.87	.643	1.836
1905 to 1912.....	5,861,872,559	.....	5.28	5.43	5.01	69.64	.627	1.763
1913 to 1917.....	6,813,516,255	.....	5.14	5.46	4.46	71.13	.626	1.865
1900 to 1917.....	5,553,637,266	.....	5.36	5.48	4.40	69.27	.628	1.829

See footnotes on p. 377.

Combined statement of 38 systems—Property investment and income accounts, fiscal years 1900 to 1917, inclusive—Continued.

Fiscal year ending June 30—	Total operating revenues.	Total operating expenses.	Net operating revenue.	Taxes.	Uncol-lectible railway revenues.	Miscel-laneous operating income.	Operating income.	Other income or deductions relating to operation.			
								Hire of equipment—balance.	Joint facilities—balance.	Miscel-laneous rents—balance.	Total.
1900.....	\$677,815,256	\$438,011,053	\$239,804,203	\$22,083,433	.....	.....	\$217,720,770	Dr. \$8,127,374	Dr. \$2,578,627	\$1,532,366	Dr. \$9,173,635
1901.....	723,362,331	468,884,651	254,477,720	23,008,538	.....	.....	231,469,182	Dr. 7,379,782	Dr. 2,983,699	1,787,646	Dr. 8,575,835
1902.....	779,604,083	510,539,734	269,064,349	24,618,890	.....	.....	244,345,450	Dr. 7,116,456	Dr. 2,853,619	1,474,865	Dr. 8,466,210
1903.....	871,941,834	585,916,697	286,025,137	25,868,847	.....	.....	260,156,290	Dr. 7,307,349	Dr. 4,024,600	2,507,725	Dr. 8,824,224
1904.....	902,211,866	621,980,378	280,230,988	27,770,273	.....	.....	252,460,715	Dr. 6,387,018	Dr. 3,857,262	2,883,299	Dr. 7,835,981
1905.....	946,656,646	642,804,266	303,762,579	27,225,853	.....	.....	276,526,696	Dr. 7,637,371	Dr. 4,569,997	2,860,761	Dr. 9,046,617
1906.....	1,047,690,720	699,850,104	347,740,616	33,834,070	.....	.....	313,906,546	Dr. 8,129,642	Dr. 5,054,684	2,351,425	Dr. 8,832,881
1907.....	1,143,106,737	782,701,014	360,404,723	35,451,669	.....	.....	324,853,054	Dr. 2,734,747	Dr. 5,874,517	2,582,121	Dr. 9,027,443
1908.....	1,097,629,129	780,387,946	317,241,583	36,421,683	.....	.....	280,819,960	Dr. 1,936,663	Dr. 5,087,141	1,791,700	Dr. 8,164,104
1909.....	1,088,272,208	739,302,921	348,969,287	39,266,139	.....	.....	307,703,148	Dr. 8,107,265	Dr. 5,301,469	1,711,601	Dr. 11,097,133
1910.....	1,240,649,010	835,839,453	405,009,557	43,077,331	.....	.....	361,932,226	Dr. 4,764,610	Dr. 5,507,733	988,293	Dr. 9,274,080
1911.....	1,258,586,267	890,878,191	367,710,066	46,452,240	.....	.....	321,257,866	Dr. 6,016,044	Dr. 5,389,928	689,079	Dr. 10,766,863
1912.....	1,297,141,490	918,391,153	378,750,337	51,354,516	.....	.....	327,395,821	Dr. 5,355,110	Dr. 6,309,496	584,877	Dr. 11,079,729
1913.....	1,429,536,030	1,028,148,176	403,187,854	54,736,881	.....	.....	348,450,983	Dr. 5,245,774	Dr. 6,794,892	1,054,502	Dr. 10,976,164
1914.....	1,382,276,189	1,049,460,563	332,814,636	57,948,949	\$483	\$8,622	274,873,826	Dr. 8,476,370	Dr. 7,455,422	1,602,902	Dr. 14,328,800
1915.....	1,323,020,253	952,125,714	370,894,539	57,355,222	151,529	14,070	313,401,858	Dr. 12,022,716	Dr. 7,071,722	1,690,969	Dr. 17,403,469
1916.....	1,605,611,880	1,066,088,344	539,523,496	60,693,997	209,715	7,760	478,657,534	Dr. 21,365,969	Dr. 7,325,498	1,491,366	Dr. 27,200,101
1917.....	1,740,946,134	1,236,991,219	512,956,915	71,775,008	161,330	5,217	441,025,794	Dr. 28,041,101	Dr. 7,956,644	1,433,516	Dr. 34,564,229

Fiscal year ending June 30.	Net operating income.	Other income.	Total income.	Other deductions.				Net income for the year.
				Lease of roads.	Interest deductions.	Miscellaneous, other.	Total.	
1900.....	\$208,547,135	99,998,478	\$318,485,098	\$10,980,117	997,554,290	87,418,088	\$115,992,445	\$102,581,193
1901.....	223,893,347	14,835,965	237,729,315	13,168,880	107,769,214	9,531,095	122,071,013	115,658,308
1902.....	230,850,940	17,567,087	248,417,377	14,187,833	102,845,691	7,263,547	124,271,070	124,146,707
1903.....	251,329,085	25,218,719	276,550,794	14,293,120	105,903,292	8,247,838	128,394,295	148,246,489
1904.....	244,664,731	25,945,867	270,195,101	13,816,941	103,976,408	8,367,990	121,190,339	159,007,762
1905.....	260,880,079	28,497,284	289,377,313	14,316,491	116,400,388	9,568,344	140,285,218	149,092,095
1906.....	305,079,665	31,111,421	336,185,086	13,894,272	128,680,112	10,738,860	148,312,794	187,872,332
1907.....	318,923,611	36,896,480	355,812,091	14,430,369	137,319,355	14,721,078	166,470,639	189,341,453
1908.....	270,660,828	43,337,862	319,196,718	14,780,643	146,396,366	8,178,092	171,802,100	147,394,618
1909.....	298,008,015	45,648,957	341,654,972	15,298,587	131,500,787	7,374,308	174,143,682	167,511,290
1910.....	320,658,176	50,270,610	370,928,786	15,847,294	129,131,867	6,693,107	174,659,298	226,274,578
1911.....	310,490,968	48,066,143	358,094,106	16,012,142	184,319,863	9,311,788	179,646,792	179,440,314
1912.....	316,316,092	49,799,476	366,115,568	15,810,537	155,623,064	8,008,184	179,439,785	186,675,783
1913.....	337,474,829	53,771,981	391,246,790	15,897,587	160,825,463	9,198,186	185,841,236	205,405,554
1914.....	260,544,836	48,006,261	308,451,157	17,668,219	170,014,826	12,184,466	199,857,514	109,593,673
1915.....	298,998,390	44,313,485	340,311,875	17,982,499	177,541,985	10,440,413	205,964,837	134,377,038
1916.....	451,457,434	47,759,657	499,217,091	16,480,307	181,561,155	10,821,845	208,869,707	290,347,384
1917.....	406,461,568	51,792,787	458,254,353	15,998,681	177,420,092	11,043,279	204,451,992	253,802,360

Combined statement of 38 systems—Property investment and income accounts, fiscal years 1900 to 1917, inclusive—Continued.

Fiscal year ending June 30—	Accumulated surplus brought forward from preceding year.	Net income for the year.	Miscellaneous profit and loss items (net).	Total surplus.	Dividends declared.	Additions, betterments, and permanent improvement appropriation.	Sinking and special reserve fund appropriation.	Total surplus appropriated.	Unappropriated surplus plus carried over to following year.
1900.....	\$128,780,869	\$102,581,163	Dr. \$6,332,619	\$223,029,413	\$52,866,658	\$16,794,609	\$2,844,612	\$72,505,879	\$150,523,534
1901.....	150,523,534	115,658,303	Dr. 5,074,224	261,107,613	56,710,683	29,677,400	2,708,930	89,096,983	172,010,620
1902.....	172,010,620	120,145,707	Dr. 6,554,288	307,710,613	67,052,054	45,933,403	4,696,002	117,701,459	190,009,154
1903.....	190,009,154	148,246,489	16,434,915	354,690,558	69,831,035	46,058,038	6,312,183	122,201,866	232,488,692
1904.....	232,488,692	139,007,762	5,208,916	376,705,370	80,071,439	61,096,762	7,287,372	148,455,573	228,249,797
1905.....	228,249,797	155,089,065	Dr. 5,180,820	378,158,072	91,744,244	41,809,974	6,450,099	140,004,317	238,153,754
1906.....	238,153,754	187,872,353	5,887,123	431,915,229	94,868,065	72,322,777	7,843,065	175,034,957	256,878,272
1907.....	256,878,272	188,941,452	21,541,918	467,361,642	107,712,647	74,575,351	7,964,648	190,252,546	277,109,096
1908.....	277,109,096	147,891,618	Dr. 2,907,860	422,092,854	102,292,723	39,525,866	8,179,788	149,999,377	272,063,477
1909.....	272,063,477	187,511,290	Dr. 6,269,577	433,335,190	100,033,353	30,222,013	7,844,884	138,101,250	295,233,940
1910.....	295,233,940	228,274,578	Dr. 11,686,072	535,194,590	137,525,145	55,373,923	4,813,334	197,712,402	337,452,188
1911.....	337,452,188	179,460,314	Dr. 2,440,639	514,491,863	125,100,998	52,378,421	6,947,664	181,427,113	333,064,750
1912.....	333,064,750	186,675,783	Dr. 12,048,087	507,662,446	140,433,332	33,446,579	8,047,804	190,927,915	316,764,531
1913.....	316,764,531	205,405,354	Dr. 37,377,273	484,782,610	130,021,005	36,475,248	7,083,281	173,580,144	311,212,466
1914.....	311,212,466	109,563,673	Dr. 17,678,009	403,128,130	118,905,640	14,183,469	4,901,080	137,983,189	265,134,941
1915.....	265,134,941	134,377,038	Dr. 30,048,541	369,463,438	117,212,347	12,457,818	6,094,873	135,795,038	233,668,400
1916.....	233,668,400	280,254,354	Dr. 25,337,664	468,435,100	117,866,137	50,410,806	13,209,947	181,213,940	317,216,160
1917.....	330,068,816	253,502,360	Dr. 17,253,116	621,114,292	126,096,909	39,840,264	7,452,971	173,379,144	447,735,148

Fiscal year ending June 30.	Operating revenues in detail.					Operating expenses in detail.				Total.	
	Freight.	Passenger.	Mail.	Express.	Other.	Total.	Maintenance of way and structures.	Maintenance of equip-ment.	Traffic and transpor-tation.		General and all other.
1900.	\$473, 148, 608	\$161, 719, 456	\$15, 068, 909	\$14, 046, 947	\$13, 813, 368	\$677, 815, 256	\$88, 513, 377	\$95, 252, 035	\$238, 098, 541	\$19, 159, 100	\$438, 891, 053
1901.	508, 507, 375	172, 983, 752	15, 241, 478	15, 241, 834	14, 332, 842	723, 362, 381	93, 174, 941	100, 037, 699	254, 767, 859	20, 904, 382	468, 884, 661
1902.	640, 543, 209	191, 582, 529	16, 364, 819	16, 806, 091	14, 205, 435	779, 504, 083	104, 069, 676	110, 656, 484	274, 101, 113	21, 082, 461	510, 539, 734
1903.	609, 734, 194	204, 287, 505	16, 638, 734	18, 946, 865	22, 344, 533	871, 941, 884	114, 072, 304	122, 840, 040	322, 256, 082	26, 748, 271	585, 916, 697
1904.	628, 435, 190	211, 450, 610	18, 116, 845	20, 806, 696	23, 402, 079	902, 211, 366	111, 254, 666	137, 499, 984	324, 692, 287	29, 503, 441	621, 950, 347
1905.	661, 276, 551	219, 642, 461	18, 191, 365	21, 927, 125	25, 519, 343	946, 536, 845	115, 928, 948	147, 527, 146	348, 647, 562	30, 800, 710	642, 804, 266
1906.	743, 165, 359	233, 084, 515	19, 860, 541	24, 542, 038	26, 938, 297	1, 047, 590, 720	127, 817, 029	164, 678, 841	374, 650, 156	32, 704, 078	699, 850, 104
1907.	818, 087, 015	248, 865, 018	19, 841, 540	26, 605, 555	29, 676, 606	1, 143, 105, 737	136, 368, 052	180, 578, 262	429, 245, 603	35, 635, 173	782, 701, 014
1908.	744, 416, 195	241, 798, 795	18, 742, 065	27, 639, 846	53, 685, 507	1, 086, 272, 208	122, 088, 062	173, 399, 348	392, 773, 673	50, 685, 173	739, 302, 921
1909.	868, 477, 081	263, 312, 145	18, 274, 176	30, 961, 474	59, 607, 176	1, 240, 641, 474	146, 027, 051	196, 574, 213	476, 926, 513	59, 619, 719	835, 630, 943
1910.	867, 705, 076	278, 459, 727	18, 356, 791	31, 963, 083	62, 103, 660	1, 258, 588, 287	151, 605, 653	202, 726, 306	488, 606, 718	60, 696, 392	890, 878, 191
1911.	897, 453, 422	282, 829, 773	19, 261, 971	32, 849, 688	66, 747, 636	1, 297, 141, 490	152, 254, 600	216, 833, 443	531, 571, 907	65, 286, 193	918, 391, 153
1912.	1, 003, 949, 985	297, 906, 291	18, 071, 180	31, 781, 703	73, 276, 871	1, 426, 336, 030	181, 470, 439	247, 819, 697	548, 566, 707	80, 194, 812	1, 026, 148, 177
1913.	953, 967, 940	303, 126, 337	20, 805, 451	34, 226, 703	70, 146, 758	1, 362, 275, 189	179, 568, 510	261, 130, 524	506, 578, 733	46, 014, 163	1, 049, 460, 533
1914.	923, 224, 985	283, 297, 870	20, 879, 018	31, 498, 106	64, 130, 275	1, 323, 020, 233	159, 474, 913	243, 934, 164	567, 548, 305	42, 136, 904	952, 125, 714
1915.	1, 153, 944, 275	303, 727, 022	22, 371, 530	38, 266, 036	77, 302, 967	1, 595, 611, 830	175, 764, 304	276, 761, 522	684, 426, 268	53, 937, 206	1, 056, 068, 344
1916.	1, 248, 631, 397	338, 667, 551	23, 649, 005	47, 261, 679	90, 748, 502	1, 746, 946, 134	187, 962, 149	310, 665, 596			1, 236, 991, 219
1917.											
1918.											
1919.											
1920.											
1921.											
1922.											
1923.											
1924.											
1925.											
1926.											
1927.											
1928.											
1929.											

! Includes all items representing the railway property used for the benefit of the public, the income and expense attached to which is covered in the operating income account.
; This net income is before miscellaneous profit and loss adjustments.

Norx.—Data for the Coal & Coke, Detroit, Toledo & Ironton, and the West Side Belt are excluded for the years 1920, 1901, and 1902, for the reason that their operations were not reported prior to 1903 in sufficient detail to permit of a satisfactory statement. Returns for 1917 for Pittsburgh & West Virginia and West Side Belt being unavailable, figures for 1916 have been substituted.

LIST OF SYSTEMS INCLUDED.

Ann Arbor.
Baltimore & Ohio.
Bessemer & Lake Erie.
Boston & Maine.
Buffalo & Susquehanna R. R. Corp.
Buffalo, Rochester & Pittsburgh.
Central New England.
Central R. R. of New Jersey.
Chesapeake & Ohio.
Chicago, Indianapolis & Louisville.
Chicago, Terre Haute & Southeastern.
Cincinnati, Hamilton & Dayton.
Cincinnati, Indianapolis & Western.
Coal & Coke.
Dayton & Union.
Delaware & Hudson.
Delaware, Lackawanna & Western.
Detroit & Mackinac.
Detroit, Toledo & Ironmont.
Erie.
Hocking Valley.
Kanawha & Michigan.
Lehigh & Hudson River.
Lehigh & New England.
Lehigh Valley.
Maine Central.
New York Central.
New York, Chicago & St. Louis.
New York, New Haven & Hartford.
New York, Ontario & Western.
Norfolk & Western.
Pennsylvania System (East & West).
Pere Marquette.
Pittsburgh & West Virginia.
Reading System.
Rutland.
Toledo, St. Louis & Western.
Toledo, Wash.
Western Maryland.
West Side Belt.
Wheeling & Lake Erie.

The CHAIRMAN. That was the one that you called attention to yesterday?

Mr. SHRIVER. Yes, Senator. Following Senator Cummins's remarks I would call attention in that same statement to the compilation of the three-year average from 1915 to 1917. In the column, "Net operating income—per cent of property investment," 5.53 per cent. In the next column, "Net income plus interest deductions—per cent of total capital obligations," 5.87 per cent.

Senator CUMMINS. It is here in my copy "6.52."

Mr. SHRIVER. Through a clerical error the first statements, which were gotten out hurriedly, had that figure of 6.52 and the correct figure was 5.87 per cent at that point. That was corrected in the record with the Interstate Commerce Commission, and the exhibits were revised. It so happened that this compilation in particular was gotten up rather hurriedly and some copies got out with that incorrect figure.

The CHAIRMAN. Was it an error that ran all the way through the calculation or merely a misquotation?

Mr. SHRIVER. No; the basic figures were correct, and the per cent that got into that column was not an error of calculation but simply an error made in transcribing it. Then, in the next column, "Per cent of capital stock outstanding," the figure is 8.20, which is the figure I have recited before.

Senator CUMMINS. That is correct, is it?

Mr. SHRIVER. That is correct, sir. In the remainder of the statement there are a few minor figures that differ, but there is nothing else in that table that we have found that makes any material difference.

Senator CUMMINS. The table I would like to have you produce is one that will show these rates, the average for the three years as compared with the capital obligations, and the capital stock brought down to the 31st of December, 1917. In other words, I want to know what capital obligations, including capital stock, have been added to these properties since the 30th of June, 1917, so that we can compare this standard return, if you please, and so that we can ascertain its effect upon the capital obligations up to the first of the present year.

Mr. SHRIVER. You would like to have that compared with the average as well—the three-year average?

Senator CUMMINS. Yes. Treat those two last columns which are headed, "Net income plus interest deduction—per cent of total capital obligations," and the column "Net income per cent of capital stock outstanding," just the same as you have treated the property investment account.

Mr. SHRIVER. I understand, Senator, and we will get that as promptly as possible. There will be some little delay, as I explained yesterday. We will have to go back to the roads for the data up to the present time.

Senator KELLOGG. Referring to the sheet which you used in answer to Senator Cummins, as I understand that, the first column, "Net operating income—per cent of property investment" shows the rate of return, the percentage of the return on your property investment, or property used in railroad operation?

Mr. SHRIVER. That is correct, Senator.

Senator KELLOGG. And the second column is not at all comparable with the first, for it shows the net income from all sources, including property used in railway operation and in investment outside, and is the per cent of return to the capital obligation, stock, and bonds outstanding.

Mr. SHRIVER. That is correct, Senator.

Senator KELLOGG. You keep an account showing your property investment of property used in railway transportation?

Mr. SHRIVER. The accounts representing the railroad property are carried in the accounts of the company. They are not necessarily grouped together.

Senator KELLOGG. No.

Mr. SHRIVER. But they can be, and are, and for this purpose have been grouped to show the exact property investment in railroad property?

Senator KELLOGG. Yes, sir.

Mr. SHRIVER. And that is what in these statements is called the property investment of the railroads.

Senator KELLOGG. You also have property investment of the various items that go to make up corporate property other than property used for railway transportation?

Mr. SHRIVER. We do. Those are shown, and all of those are covered in the annual reports of the commission.

Senator KELLOGG. But you have made up no statement to show the percentage of net return of all corporate net income to all corporate property investment.

Mr. SHRIVER. That is, separate from the railroad properties?

Senator KELLOGG. No; including them.

Mr. SHRIVER. Yes; this percentage represents the return on all of the property.

Senator KELLOGG. Yes; but it is on corporate obligations.

Mr. SHRIVER. Oh, you mean as to this particular item of "Property investment"?

Senator KELLOGG. Yes.

Mr. SHRIVER. No; they are not related at all.

Senator McLEAN. How do you measure the value of your property investment?

Mr. SHRIVER. Generally speaking, the property investment is the book value, and while treated differently by various roads it generally reflects the cost of the property to each road either in money or securities. In the case of the Baltimore & Ohio its property investment reflects the cost of the old company, construction of which was commenced in 1828, together with other properties it had acquired, up to the reorganization in 1898-1900.

The railroad operations generally were unprofitable between 1892 and 1896, and this fact coupled with the heavy fixed charges on the property caused the company to go through reorganization. The original charter was retained and there was a composition instead of a foreclosure, and in that composition practically all of the old obligations (many of which carried interest rates of 6 and 7 per cent) were retired and new obligations bearing low rates of interest issued in exchange. By retiring these underlying obligations it was possible to make new mortgages with direct lien on the properties and secure

a basis for raising new capital to buy in properties previously held under high rentals, and to provide funds for new equipment and construction.

The investment in the entire property taken over, including about \$42,000,000 so-called expenses in reorganization, was about \$290,000,000, and from July 1, 1900, to June 30, 1917, there have been expended for road and equipment on these lines about \$300,000,000; deducting the accrued depreciation of about \$30,000,000 gives the property investment at June 30, 1917, as shown for this company in the statements submitted.

The reorganization of the Baltimore & Ohio and its affiliated lines was under the jurisdiction of the United States court. The sale and exchange of the new securities and the application of proceeds in payment of debt and acquisition of properties was done under the court's orders. The net result of the reorganization was to reduce the total of capital obligations outstanding by over \$40,000,000 and to reduce the fixed charges by more than \$2,000,000 annually. Incidentally the property investment was written down by over \$25,000,000, and this followed other large sums which had been written off in 1887-88.

I regret getting into this question at such length, but I think it reflects a conservative handling of the property investment and believe it is typical of many roads, and it is particularly important to note as a result of the reorganization that the fixed interest charge was so materially decreased and has thus relieved current operations of the high interest rates which would otherwise have prevailed. As I recall, the direct funded debt of the Baltimore & Ohio Co. proper was reduced about \$13,000,000 and its interest and rental by \$1,300,000.

Senator KELLOGG. What was that remark?

Mr. SHRIVER. That the direct obligations of the Baltimore & Ohio Co. were reduced over \$13,000,000 and its interest and rental charges by more than \$1,300,000—taking into consideration the affiliated companies and capitalizing the leaseholds the reduction in both obligations and fixed charges was much greater.

Senator GORE. I understand you to say that your obligations were reduced by \$13,000,000?

Mr. SHRIVER. Yes, Senator, the obligations of the Baltimore & Ohio Co., including capitalization of leaseholds.

Senator GORE. And this increase of \$42,000,000. What was that?

Mr. SHRIVER. That is an item which the accountants at the time treated as an expense in reorganization—as a matter of fact it represented additional cost of properties, discounts on bonds and stocks about \$15,000,000, and balance chiefly representing premiums in stock in retiring old underlying bonds in exchange for new securities bearing low rates of interest.

Senator GORE. Bonds converted into stock, and so on?

Mr. SHRIVER. Yes, Senator. Since the reorganization in 1900 all the stock issued and all bonds issued by the Baltimore & Ohio Railroad Co. have gone into the property at 100 cents on the dollar. That is, the stock sold, over \$90,000,000, has been at par, and the bonds sold, about \$250,000,000, have been accounted at par, the discount having been charged, as I have explained, against the surplus earnings or profit and loss.

Senator KELLOGG. Were the discounts heavy in any case?

Mr. SHRIVER. They have been in some cases.

Senator McLEAN. It represents in every instance an actual application of funds.

Mr. SHRIVER. I have been familiar with all the expenditures and all the capital issues of the Baltimore & Ohio Railroad Co. since 1900 and I know that in this property investment, for instance, that every dollar that is there represented as having been expended since 1900 went in in real dollars and cents.

Senator McLEAN. How do you get at the book value?

Mr. SHRIVER. That is the account on our books. For instance, we have our cost of road, which is so much. If we make a new construction, that cost of road is increased, and those items become your book value on that property. It is the value as we carry it on the books. I would correct that statement to say that that does not necessarily represent the value but represents the cost to this particular carrier.

Senator McLEAN. Suppose you bought a piece of real estate 20 years ago and the market value of it is say three times what it was then. How does that affect your book value? Do you take that appreciation price into consideration?

Mr. SHRIVER. No, Senator; I have in mind an instance right here. The lot in front of the Union Station was bought, as I recall it, in 1835 or 1838 for \$35,000, which with other lots subsequently purchased stands on our books at about \$250,000, although now valued at \$1,400,000. That has been condemned by the Government, as I recall it, at about \$1,240,000. That lot is still in our property account at the \$35,000, the original cost.

Senator McLEAN. Yes. In the account of your property investment; but supposing you are getting up a book value of your property at the present time. Is that the same thing?

Mr. SHRIVER. Yes; the same thing. In other words, that was \$35,000. If our accountants were asked to furnish a statement of the book value of our property, that particular lot that I referred to would be included in that statement at \$35,000.

Senator CUMMINS. That is, you would not add anything to-day?

Mr. SHRIVER. In other words, appreciation has not been taken into account. I would say in relating that property to this property investment that we have been discussing here as the railroad operating property, which has made these railroad operating earnings, even that \$35,000 has been excluded because it is outside of the railroad operating property and is held, we might term it, for investment. It is not very productive just at the present. We are awaiting settlement for that lot with the Government, and we consider that as an investment and not as a railroad property, and therefore it is not included in the property investment as we present it for consideration here.

While those appreciations have not been taken into consideration, the depreciation on equipment, for instance, has been eliminated, amounting, as I recall, to some \$23,000,000. In other words, this property investment is as nearly as we can arrive at the net amount of these properties as we find them on our books.

Senator ROBINSON. Does the term "property investment" represent the alleged cost of the property?

Mr. SHRIVER. It does, as I have explained.

Senator ROBINSON. It does not mean, then, its present value?

Mr. SHRIVER. It has no relation to its present value. As I explained, we have these lots that cost us, years ago, \$250,000, and are still at that figure, and which have been condemned by the Government for something over \$1,200,000.

The CHAIRMAN. Are these property investments usually made strictly as investments, or are they made more generally in reference to the ultimate convenience of the railroad?

Senator GORE. What was that, Senator? I did not understand it.

The CHAIRMAN. I say, are these property investments, outside of what are actually necessary to operate the railroad, made out of the earnings of the railroad; are they made as investments, pure and simple, or are they ordinarily made for the ultimate convenience of the road?

Mr. SHRIVER. These investments are of two classes, one the distinctly railroad investment, and, second, the other investments. I understand you now to refer to the other investments, or second item.

The CHAIRMAN. Yes.

Mr. SHRIVER. I think, in the main, the second items have been acquired in the early periods of these railroads in conjunction with a development of the railroad itself. In other words, in the early days it was the practice to buy a coal territory and then have a railroad built to it and then to develop the coal, and the railroad and the coal operation became practically one, although the investment was kept separately and the railroad was built to develop the coal lands, and I think that is why a great many of these railroads happen to have investments in coal lands.

The CHAIRMAN. Do you make any investments now? Are there any considerable investments made now out of the capital or earnings of a railroad that have not any relation to the actual operation of the railroad?

Mr. SHRIVER. I can not speak, of course, authoritatively on that generally, but I would say that in my opinion there is no railroad that would to-day make investments, for instance, in coal lands for development purposes. They might invest in them for the purpose of getting their own fuel, but as to going into a commercial proposition I think it is generally the sentiment of the railroads, and has been for a great many years, that their business was railroading and not outside investments, and I think that is the general practice of the roads of the country to-day.

The CHAIRMAN. Are there any other questions?

Mr. SHRIVER. I have another statement that I thought might be of some value in this connection, and that is the one that I have submitted copies of. I have made a compilation here for each of these 38 systems that we have been speaking of, showing the property investment and what the income of each of these carriers would be, approximately, based on the three-year average of standard return on June 30, 1917.

(The statement was filed marked "Shriver Exhibit F.")

Mr. THOM. Is it necessary to make an explanation about that or might it be just put in?

Mr. SHRIVER. There are one or two points in there along the line of the Senator's inquiry that might be illuminating. I call atten-

tion to this fact: Several of the roads in this statement which appear to have a considerable surplus over dividends and a considerable surplus in relation to the entire capital obligations are those very roads which have large investments in coal lands and have been operating them. Take the Delaware, Lackawanna & Western, for instance; it has an earning, a net corporate income earning of \$19,000,000, and after its dividend of \$11,000,000 there is left a surplus over dividends of \$8,000,000, but of the earnings of that company \$16,675,000 came from the operation of the railroads, and \$6,404,000 was the net result of income from other properties.

Senator POMERENE. That is coal properties?

Mr. SHRIVER. Chiefly their coal properties. The Central Railroad of New Jersey also owns a large amount of coal lands and operates them. The Lehigh Valley is another instance where with an earning of \$8,069,000, after paying \$6,000,000 dividend, there is \$1,998,000 surplus, and \$4,117,000 of its earnings came from its outside operations. In the same way, I think, the Pennsylvania has a \$12,000,000 income from outside operations and some investments in coal.

Senator GORE. How is that?

Mr. SHRIVER. The Pennsylvania has a great many outside investments, some of which are in coal operations, although I think they have recently sold some of those operations.

Mr. THOM. Do those appear on the face of the statement?

Mr. SHRIVER. The income from the operation of the railroad and income from other sources is shown separately. The net operating income shown in this statement in column 3 is arrived at by scaling up the earnings of the three years, 1915, 1916, and 1917, taken as a test period, to the property investment on June 30, 1917, affording the property of that date the same return as the average return for the three years, but takes no account of the additional investment to December 31, 1917. That is shown in a footnote. Bringing the property up to December 31, 1917, gives, on the same basis, an estimated earning for these properties on the basis of the average for the three years of \$400,000,000, as compared with the \$384,000,000 produced by the three-year earnings.

I have already stated the disposition of the actual average income which occurred in the three-year period, and I would like to state what I estimate the disposition of this \$400,000,000 of net operating income would be if compensation were allowed on this basis. The net operating income of \$400,685,275 and the other income, which I have taken for the year ending June 30, 1917, is \$51,792,787, making a total income of \$452,477,994.

From that there is deducted the same interest that was deducted for the year June 30, 1917, and I have added an additional charge, estimating the additional obligations which Senator Cummins has inquired about. I have estimated that for the period July 1 to December 31 at \$60,000,000, as against the \$110,000,000 of increased property, and the interest on that adds an interest charge of \$3,600,000. It is estimated that the additional income tax over and above what has been charged in the past, and which I understand will be an additional charge against the income of these carriers in the future, at \$25,000,000, or making total deductions for interest and additional taxes of \$233,051,992, leaving a net balance available for the stockholder of \$219,426,000. Deducting from that the same

dividends that were paid by these roads for the year June 30, 1917, \$126,095,909, leaves an earned surplus on the stock of \$93,330,093.

If we take the discounts, losses, and so forth at the same average as they were in the three-year period under consideration, it is \$21,686,983, which would leave an available surplus of \$71,643,110, or 2.55 per cent of the capital stock of these carriers, which per cent on the total capital obligations, that is, the margin of safety on this total investment, would be 1.01 per cent.

From that, assuming that the same percentage, or same amount of additions and betterments will be made out of that income that were made in the average of the three years, that is, the average investments, \$34,269,629, would leave a balance of unappropriated surplus to these carriers of only \$37,373,481, which I estimate as a conservative result of the application of the theory of giving these carriers the same rate of return, not the same dollars and cents return, but the same rate of return that they realized on their property in the three-year period, which is 5.54 per cent.

That final, unappropriated surplus represents 1.33 per cent of the capital stock and 0.53 per cent of the entire capital obligation, or one half of one per cent on the entire capital obligation, and the margin of safety that is finally left for these carriers. The figures, in statement form, are as follows:

Approximate condensed income account based on net operating income scaling 3-year average earnings to property at Dec. 31, 1917—Thirty-eight systems.

Net operating income.....	\$400,685,207
Other income (year June 30, 1917).....	51,792,787
	<hr/> 452,477,994
Interest and miscellaneous deductions June 30, 1917..	\$204,451,992
Interest on new obligations to Dec. 31, 1917, estimated \$60,000,000.....	3,600,000
Additional income tax, estimated.....	25,000,000
	<hr/> 233,051,992
	<hr/> 219,426,002
Dividends (year June 30, 1917).....	126,095,909
	<hr/> 93,330,093
Earned surplus.....	93,330,093
Discounts, losses, etc. (average for 3 preceding years).....	21,686,983
	<hr/> 71,643,110
Available surplus.....	71,643,110
Per cent on capital stock.....	2.55
Per cent on total capital obligations.....	1.01
Appropriations for additions and betterments (average for 3 years).....	34,269,629
	<hr/> 37,373,481
Balance unappropriated surplus.....	37,373,481
Per cent on capital stock.....	1.33
Per cent on total capital obligations.....	.53

The CHAIRMAN. Have you a total that would show the distinction between what is denominated here "net operating income," showing the net income from all sources as related to property investments, showing the rate of return to the corporation, showing the net income from all sources as related to property investments, showing the rate of return to the corporation from all sources, not only the net operating income, but the income from sources that are not included in the operating income for the three-year period?

Mr. SHRIVER. You mean as to the property investment which I have recited as a railroad property?

The CHAIRMAN. Yes; including them all, so that it shows the net income to the corporation?

Mr. SHRIVER. I have not made such compilation, Senator, because it had not seemed to me that that would be a correct way of relating it. That is, there is no relation between all the earnings of these properties and what they would earn on this railroad property alone. In other words, if a company had \$100,000 invested in a railroad—

The CHAIRMAN (interposing). I understand the distinction. I thought perhaps you had some table showing that.

Mr. SHRIVER. I did not make it because I did not think it was properly related at all, but I have given the total earnings of the company in relation to the total capital of the company as what appeared to me to be a proper relation.

The CHAIRMAN. I understand that the Government's proposition is to find out what you are entitled to as nearly as possible for the use of the actual operating properties.

Mr. SHRIVER. Of the railroad properties?

The CHAIRMAN. Yes; of the railroad properties.

Mr. SHRIVER. Yes; that is my understanding, and that is what this statement has been based on.

The CHAIRMAN. But I thought perhaps you might have a table that showed the return to the corporation from all of its investments.

Senator CUMMINS. Mr. Shriver, if the Government takes your bonds at par during the period of occupation and operation, why should you deduct any discount on the bonds?

Mr. SHRIVER. Of course, if they did take all of our obligations—

Senator CUMMINS (interposing). That is just what this bill provides, is it not?

Mr. SHRIVER (continuing). That would add, as I recall it, about \$12,000,000.

Senator CUMMINS. \$21,000,000.

Mr. SHRIVER. That included extraordinary losses, which I take it would still be a charge against the corporation, but the discounts referred to as I recall are about nine or ten million dollars, so that that would increase that \$37,373,000 final unappropriated surplus and make it as much as \$47,300,000.

That is a very proper suggestion, with this difference. I am not entirely clear, from the suggestions that have been made so far, whether it is the purpose of the Government to advance all the capital that the roads may require—that is, whether they are going to refund maturing obligations or whether they simply purpose advancing funds for additions and betterments that may be made in the future. That is a matter of policy that they will probably determine.

If the railroads are left to refinance their maturing obligations, which, in the case of these eastern roads, is \$102,000,000 this year, there would be discounts, and probably very heavy ones, that we would have to meet.

Senator KELLOGG. You mean if the Government takes your securities at par, there would not be any discount?

Mr. SHRIVER. Yes, sir; and would increase this final surplus of ten or twelve million dollars over what I have stated it, and the point

I make is that even so the margin would be extremely small considering the large amount of capital involved.

The CHAIRMAN. Are there any other questions that any member of the committee desires to ask? If not, Mr. Shriver will be excused now.

Senator WATSON. Mr. President, yesterday, with the view of determining the possibility of private management as against public control, I asked the witness, Mr. Shriver, to give figures showing the increase in the tonnage handled by the 38 railroads. He said he was not able to give those figures. If it would be agreeable to the committee, I would like to put Mr. Patterson on and ask him that question now.

Senator KELLOGG. Was not that given by Mr. Kruttschnitt?

Senator WATSON. No. He said he did not know anything about the eastern railroads at all.

Mr. PATTERSON. May I just read the figures?

Senator WATSON. If it be agreeable to the committee.

The CHAIRMAN. I see no objection to his reading the figures in.

Senator WATSON. Yes.

Mr. PATTERSON. I have the figures, Senator, from June 30, 1910, to June 30, 1917, for the eastern roads. If it meets with your approval I will read simply for the years ending June 30, 1910, 1916, and 1917, and then bring it up to October 1, without reading the intermediate figures, or I will do whichever you desire.

Senator POMERENE. Put the entire table in.

Senator WATSON. Yes; let us have the whole table in.

Mr. PATTERSON. Then, suppose I just have it copied and filed. That will save a great deal of time.

Senator WATSON. That is all right.

Mr. PATTERSON. I have the six months' figures, from April 1, the date of the declaration of war, up to and including October 1, and I will bring it up to that time.

Senator WATSON. Then let it all be filed as a part of the record.

Thirty-eight eastern systems.

Years ended June 30--	Revenue ton-miles.	Increase as compared with 1910.	Revenue passenger-miles.	Increase as compared with 1910.
		<i>Per cent.</i>		<i>Per cent.</i>
1910.....	138,977,833,221		14,896,095,430	
1911.....	138,353,921,955	¹ 0.4	16,452,017,351	3.7
1912.....	144,123,802,168	3.7	15,636,689,193	5.0
1913.....	162,287,607,494	16.8	16,349,265,798	9.8
1914.....	153,980,932,267	10.8	16,650,283,997	11.8
1915.....	147,238,437,031	5.9	15,228,415,704	2.2
1916.....	184,055,575,566	32.4	15,943,199,481	7.0
1917.....	197,629,431,119	42.1	17,738,286,522	19.2

¹ Deficit.

SIX MONTHS APR. 1 TO OCT. 1, 1917, COMPARED WITH SAME PERIOD OF 1916.

Revenue ton-miles:	
1917.....	99,138,196,031
1916.....	86,651,466,156
Per cent of increase.....	11.5

The CHAIRMAN. Now, Mr. Thom.

Mr. THOM. Mr. Chairman, I would like to be permitted now to hear Mr. Frank Trumbull, who is chairman of the Railway Execu-

tives Advisory Committee, and who is chairman, also, of the Chesapeake & Ohio and of the Hocking Valley and the M. K. & T. Railroads.

STATEMENT OF MR. FRANK TRUMBULL.

The CHAIRMAN. Mr. Trumbull, give the stenographer your full name, address, and your official connection.

Mr. TRUMBULL. Frank Trumbull, 61 Broadway, New York; chairman Railway Executives Advisory Committee; chairman of the Chesapeake & Ohio Railway Co.; the Hocking Valley Railway Co., and the Missouri, Kansas & Texas.

Mr. Chairman, I would like to say first a word of indorsement of what Mr. Thom said to you on Monday, that we are not here in an obstructive attitude, but we think we would be derelict to the owners of these railroads and to you if we did not present the facts as they appear to us.

I have had statements made up, and I have a copy for each member of the committee, if you like, by individual roads, showing the net operating income for the three years ended June 30, 1915, 1916, and 1917.

Senator POMERENE. Let me ask you whether you mean all the roads of the country?

Mr. TRUMBULL. It is not all the roads, Senator, because we did not have time to get them all in.

Senator POMERENE. You spoke of "the roads." Indicate, please, of what roads you are speaking, and how many.

Mr. TRUMBULL. This is 86 per cent of the mileage.

The CHAIRMAN. Senator, will you suspend a moment until the clerk hands these tables around to the different members?

(The statement referred to is here printed in full, as follows:)

SUMMARY.—*Net operating income and rate of income on investment, years ended June 30, 1915, 1916, and 1917.*

District and item.	Fiscal years ended June 30—			Three-year average— 1915, 1916, 1917.
	1917	1916	1915	
Eastern district:				
Property investment.....	\$6,910,058,294.63	\$6,727,320,431.33	\$6,588,517,532.01	\$6,741,965,419.32
Net operating income.....	369,498,495.41	417,692,337.75	274,211,332.43	359,800,771.86
Rate of return, per cent.....	5.35	6.21	4.16	5.25
Southern district:				
Property investment.....	1,197,230,816.94	1,170,117,118.90	1,143,526,285.99	1,170,291,407.28
Net operating income.....	71,414,909.80	65,146,837.69	44,042,193.23	60,201,313.57
Rate of return, per cent.....	5.97	5.57	3.85	5.14
Western district:				
Property investment.....	6,304,740,702.90	6,182,979,645.19	6,081,638,566.81	6,189,786,304.63
Net operating income.....	371,611,668.78	325,563,603.60	255,393,882.80	317,523,051.73
Rate of return, per cent.....	5.89	5.27	4.20	5.13
United States:				
Property investment.....	14,412,029,814.47	14,060,417,195.42	13,813,682,384.81	14,102,043,131.23
Net operating income.....	812,525,073.99	808,402,779.04	578,647,408.46	731,525,087.16
Rate of return, per cent.....	5.64	5.74	4.15	5.19

NOTE.—Net operating income—operating revenues less operating expenses, taxes, and equipment, joint facility and miscellaneous rental balance.

Mileage represented:	
Eastern district.....	53,048.23
Southern district.....	16,975.94
Western district.....	101,598.90
United States.....	176,623.07

Senator WATSON. I will ask him this, Mr. Chairman, while the tables are being handed around:

You are chairman of the Railway Executives' Advisory Committee. What is that committee?

Mr. TRUMBULL. It is a committee organized three or four years ago to deal with Federal relations, particularly the matter of legislation in Congress. Mr. Alfred P. Thom is our general counsel and is charged especially with the duty of attending hearings before committees like this.

Senator WATSON. What per cent of the railroads are included within this supervision?

Mr. TRUMBULL. About 90 per cent of the railroads of class 1.

The CHAIRMAN. And they constitute about what per cent of the entire mileage?

Mr. TRUMBULL. A little less than 90 per cent.

Senator POINDEXTER. What is the general attitude of that committee on the question of State control of interstate traffic and continuance of the State commissions as against exclusive Federal control?

Mr. TRUMBULL. We have advocated exclusive Federal control.

Senator POINDEXTER. What is the attitude of the committee on the question of permanent Government operation of the roads?

Mr. TRUMBULL. We have not taken any position about that.

Senator POINDEXTER. Do you know what is the general opinion in railroad circles on that question? Of course, if you do not know, just say so; it can only be approximated at any rate.

Mr. TRUMBULL. Yes; I think I do.

Senator POINDEXTER. What is it?

Mr. TRUMBULL. I think as a whole it is regarded as an undesirable step for the country. You are speaking of permanent ownership or regulation?

Senator POINDEXTER. Yes; Government ownership.

Mr. TRUMBULL. Yes; that is what I assumed.

Senator POINDEXTER. How is it regarded from the standpoint of the interests of the owners of the railroads?

Mr. TRUMBULL. Like everything else, Senator, it would depend upon the price they would get. No doubt a great many of them would be glad to sell to anybody at a fair price.

The CHAIRMAN. You may proceed now, Mr. Trumbull, if the Senator is through.

Senator POINDEXTER. Yes; I am through.

Mr. TRUMBULL. I should say, Mr. Chairman, in connection with these statements, that there has been no opportunity to recheck them, and they have not been checked by the Interstate Commerce Commission, as no doubt will be desirable later on.

I have here the form upon which they were based, which does not exactly correspond with the language of the bill, because there was no bill when we sent out the call for these figures.

The principal difference is in the miscellaneous rentals, which are deducted from these statements to arrive at the net operating income and are not deductible under the bill.

Senator GORE. State that again, please, sir.

Mr. TRUMBULL. The principal difference between these figures and the language of the bill is in the matter of miscellaneous rents, which are deducted in these statements in order to arrive at net op-

erating income, but are not deductible in the bill itself. That, however, is not a very large item. I should like it to be understood that these figures are not filed as finalities in behalf of any road.

Mr. THOM. Is not that item negligible for the purposes of this statement?

Mr. TRUMBULL. Yes; it is. Still, if the miscellaneous rents should be increased later, it would be a question, no matter whether it is large or small, as to whether the railroads ought to pay it out of their guarantee, or whether it ought to be assumed by the people who are directing the operation.

I do not wish to weary you with figures, so I will just be as brief as I can in making some comments about these statements.

In the first place, in looking them over the thing which will be evident to anybody is the inequality in this treatment.

The CHAIRMAN. You mean as to individual roads?

Mr. TRUMBULL. Yes, sir. That is to say, the average for the three years will be quite different on some roads in comparison with the last twelve months' period than it is on some other roads. Results for the three years were quite different in many cases from the record which the individual roads were making up to recently.

Take the Chicago & Eastern Illinois, for instance; the average for three years is \$1,000,000 less than the year ended last June; the Big Four Road is \$1,800,000 less; the Hocking Valley is \$700,000 less—not a large road, but an important link in getting coal to the Northwest; the Wabash is \$2,100,000 less; the Western Maryland is \$900,000 less; the Atlantic Coast Line is \$2,500,000 less; the Central of Georgia is \$900,000 less; the Chesapeake & Ohio \$2,300,000 less; the Florida East Coast, \$700,000 less; the Illinois Central, \$5,300,000 less; the Louisville & Nashville, \$1,800,000 less; the Nashville, Chattanooga & St. Louis, \$1,200,000 less, with only 1,200 miles of road; the Seaboard Air Line, \$700,000 less; the Virginian Railway, which runs to Norfolk, \$1,200,000 less on 512 miles of road. In the western group, the Atchison is \$6,600,000 less.

Senator CUMMINS. I do not comprehend the full comparison that you are making. Are you making comparison between the standard of the bill and the recent net earnings, or income of these companies?

Mr. TRUMBULL. The most recent 12 months that has been computed.

Senator ROBINSON. Is that for the last fiscal year, or the last calendar year?

Mr. TRUMBULL. I should say, Senator, that we are not able to give you all the roads, because the Interstate Commerce Commission changed the fiscal year, with the concurrence of most of the roads, a little over a year ago, so there are no figures by individual roads at the commission's office for the year ended June 30, 1917.

Senator ROBINSON. And the comparison you are making is for the calendar year?

Mr. TRUMBULL. No; the comparison I am making is the average provided by the bill, ended June 30, which I asked the different roads to make up.

Senator ROBINSON. I understand.

Senator GORE. This shows the excess earnings for the year 1917 over the average for the three years? Is that the point?

Mr. TRUMBULL. Yes.

The CHAIRMAN. What was the question you asked, Senator Gore? I did not understand that.

Senator GORE. I asked him if the figures that he was quoting showed the excess for the fiscal year 1917 over the average for the three years, the basic three years.

Mr. TRUMBULL. Yes.

Senator CUMMINS. Yes; that is what he stated.

Mr. THOM. Some of these gentlemen want to know for what purpose you are reading these figures?

Mr. TRUMBULL. I have in mind the importance of a tribunal which will pass upon roads exceptionally situated.

Mr. THOM. You want to show that these are exceptional cases?

Mr. TRUMBULL. Yes.

I will not attempt to read many more, Mr. Chairman, but in the western group you will find two or three conspicuous figures.

The Missouri Pacific, for instance, for the average period is nearly \$5,000,000 less than the 12 months ended last June.

The Missouri, Kansas & Texas, which is in receivership, is about \$800,000 less.

One of the most glaring figures is the International & Great Northern, which also is in receivership. Its net operating income for the 12 months ended last June would be almost exactly cut in two by applying the average for the three years.

Senator POINDEXTER. What was it?

Mr. TRUMBULL. \$2,800,000 down to \$1,423,000. There are a number of causes that have contributed, Senator. There was a great difference in business. For instance, in the fiscal year ended June 30, 1915, they had six-cent cotton in Texas. That not only diminished the income of the farmers, but diminished their purchasing power so that all kinds of business was depleted, and if you look at the southern group that is a very conspicuous feature all over the South.

Then, in these receivership roads that I was going to mention there were special physical conditions. Usually before a receivership a company is trying to economize to the last cent. In determining a policy it has to choose between a default on its bonds on the one hand or economizing in every possible way, and usually there is economy in maintenance, and during receivership this deferred maintenance is usually made up and charged to expenses, which, of course, diminishes the net income for that period.

So that what I have in mind in mentioning these special instances is, first, roads that would be underpaid because of such conditions as 6-cent cotton, crop shortages on some lines, strikes and floods in some cases, but particularly such roads as the Missouri Pacific, which has recently been reorganized, and such roads as the Missouri, Kansas & Texas, and International & Great Northern, which are not yet reorganized.

Senator POMERENE. You have presented here the average earnings for these roads for the three years, 1915, 1916, and 1917?

Mr. TRUMBULL. Yes, sir.

Senator POMERENE. And you contrast those earnings with the earnings of the year 1917, which was the basis of the three years, in order to show to the committee the injustice of this rule.

Now, on the other hand, have you prepared a similar table showing what the average earnings of these three years would be as compared with the average earnings for the year 1915, which was the least profitable of these three years?

Mr. TRUMBULL. No; I have prepared no table for either, Senator.

Senator POMERENE. You have called attention to it.

Mr. TRUMBULL. I can call off figures from this statement and show the comparison right from the statement.

Senator POMERENE. It might be of interest to the committee to point out the contrast between the earnings of 1915 and the average earnings for those three years on those same roads.

Mr. TRUMBULL. I will be glad to do it if you like.

Senator POMERENE. I would be very glad if you could take the same roads and give us those figures.

Senator GORE. Could you put in the record, if you have it, a statement of the Frisco and Rock Island?

Mr. TRUMBULL. Yes. Shall I call those off now?

Senator GORE. It does not make any difference. I want it in the record.

Mr. TRUMBULL. Suppose I finish 1917?

Senator GORE. Very well.

Mr. TRUMBULL. The St. Louis & San Francisco averaged for the three years about \$2,000,000 less than the year ended June 30, 1917.

Senator WATSON. How did it compare with 1915, Mr. Trumbull?

Mr. TRUMBULL. It was \$2,200,000 better. The Rock Island for the year ended last June was \$4,000,000 better than the average, and the average was \$4,000,000 better than the year 1915.

Senator GORE. 1916 would be just about the same as the average?

Mr. TRUMBULL. Yes, sir.

Senator GORE. Are you going to print this entire table in connection with your statement?

Mr. TRUMBULL. These are all typewritten and there is a copy here for each member.

The CHAIRMAN. Mr. Trumbull, does the table show, in answer to the question asked by Senator Pomerene, the excess over 1915, as well as the deficit under 1917?

Mr. TRUMBULL. I have not carried it out in separate columns, but the columns are all there. I made the calculations as I read them off.

The CHAIRMAN. They can be calculated from this?

Mr. TRUMBULL. Yes.

Senator CUMMINS. I think Senator Pomerene wanted to have the record show, aside from the study of the table, some of these instances in which the average was more than the net income for 1915.

Mr. TRUMBULL. Yes. Shall I read those now?

Senator POMERENE. I would be very glad to have them, because it helps to elucidate the point that is being made.

Senator CUMMINS. The answer to the question would involve the reading of nearly all the roads of the country, would it not?

Senator POMERENE. No; I do not want that. Mr. Trumbull called attention to 6 or 10 roads, and I would like to further elucidate the point that you were making by calling attention to the earnings of the year 1915 as compared with that.

Mr. TRUMBULL. I will give you the average for the three years.

Senator POMERENE. Yes. It is better than the year 1915.

Mr. TRUMBULL. The Chicago & Eastern Illinois, \$1,500,000—
 Senator CUMMINS (interposing). I suggest that you begin at the top of the table.

Mr. TRUMBULL. I was simply reading the same roads, Senator, that I read before.

The Hocking Valley is \$900,000 better; the New York Central is \$13,000,000 better; the New York, New Haven & Hartford is \$1,000,000 better.

Senator WATSON. That is, the average for the three years is \$1,000,000 better than in the year 1915?

Mr. TRUMBULL. Yes. The Wabash is \$3,500,000 better. There they had the receivership condition that I spoke about. The Western Maryland, \$1,100,000 better; the Atlantic Coast Line, \$2,800,000 better; the Central of Georgia, \$700,000 better; the Chesapeake & Ohio, \$3,300,000 better; the Florida East Coast, \$600,000 better; Illinois Central, \$4,600,000 better; Louisville & Nashville, \$6,800,000 better; the Seaboard Air Line, \$1,100,000 better; the Virginian, \$1,000,000 better; the Rock Island & Pacific, \$3,900,000 better; International Great Northern, \$1,100,000 better?

Senator POINDEXTER. Where is that railroad?

Mr. TRUMBULL. It runs from Long View, Tex., to Houston, and to San Antonio and Laredo.

Missouri Pacific, \$2,400,000 better; St. Louis & San Francisco, \$2,200,000 better.

Senator GORE. Does that end the list?

Mr. TRUMBULL. Yes.

Senator GORE. I think, Mr. Chairman, that there is pretty close correspondence between the 1916 figures and the average, and I would like to have them printed in the record. I gather from the figures he has just read that 1917 exceeds the average about as much as 1915 is under the average, which makes 1916 approximate the average pretty closely. There will be one or two variations, I notice, but, generally speaking, they are very close.

I would like very much to hear them read, unless the committee would prefer to have them printed in the record, but it should be in the record in order to make it complete.

Mr. TRUMBULL. The figures are here for the three years.

Senator POINDEXTER. I would be very glad to have, as Senator Gore suggests.

The CHAIRMAN. What was your suggestion, Senator Gore?

Senator GORE. That he now read the comparison between the average and the year 1916. I judge offhand that 1916 will run pretty close to the average.

Mr. TRUMBULL. I can answer it in a general way, Senator Gore, that it is about \$100,000,000 less in total.

Senator GORE. One hundred million dollars less in 1916 than the average?

Mr. TRUMBULL. The average is \$100,000,000 less than the total in 1916. The average is less.

Senator ROBINSON. The average contemplated for the bill is less than the return for 1916 by nearly \$100,000,000?

Mr. TRUMBULL. Yes.

Senator POMERENE. It was shown by one of the witnesses the other day that if we eliminated the year 1915 from this bill and based the

compensation upon the years 1916 and 1917, it would be about \$109,000,000 more than it would if the compensation were based on the average for the three years, as I remember the figures.

The CHAIRMAN. Is that about correct, according to your figures?

Mr. TRUMBULL. Yes; about \$100,000,000.

Senator GORE. That is for the two years, though.

Senator POMERENE. Yes.

Senator GORE. Suppose you read a few of those figures, if you have them, Mr. Trumbull, for these same railroads—1916 compared with the average.

Mr. TRUMBULL. I will give you instances where the year 1916 is better than the average.

Senator GORE. No; I would rather have the same list.

Mr. TRUMBULL. You want 1916 compared with the average?

Senator GORE. The same roads; yes.

Mr. TRUMBULL. Compared with the average?

Senator GORE. Yes.

Mr. TRUMBULL. I will give you the roads which were better in 1916, the same roads that I enumerated before.

Senator GORE. Yes; whether better or worse.

Senator CUMMINS. You have the total right there; the total net operating income for 1916 of all of these roads named in the list was \$414,368,820, and the three-year average is \$401,072,993.

Senator GORE. I thought it was a pretty close approximation.

Mr. TRUMBULL. That is the eastern roads.

Senator CUMMINS. Have you got those totaled anywhere?

Mr. TRUMBULL. The total is on the second sheet, Senator.

The CHAIRMAN. Mr. Trumbull, as I understood you, you were attempting to show the committee how this would work an inequality or an injustice, and you cited certain roads that would lose for the year 1917.

Mr. TRUMBULL. Yes.

The CHAIRMAN. Then, under a question from Senator Pomerene, you showed how they would gain as compared with 1915. Now, Senator Gore's question was, "What would be their status in regard to 1916," that is, these identical roads?

Mr. TRUMBULL. That is what I understood.

The CHAIRMAN. We would like to have that. I presume that was Senator Gore's idea.

Senator GORE. Yes.

The CHAIRMAN. Whether it be better or worse.

Senator CUMMINS. That is not in this table.

Mr. TRUMBULL. The Chicago & Eastern Illinois was \$400,000 better.

Senator GORE. \$400,000 better in 1916 than the average?

Mr. TRUMBULL. Yes, sir. The Big Four road was \$2,000,000 better; the Erie was \$6,000,000 better; the Hocking Valley was only \$180,000 better; the New York Central is about \$11,000,000 better in 1916; the New Haven was almost identical; the Reading was \$2,800,000 better; the Wabash was \$1,400,000 better; the Western Maryland was \$300,000 better; the Atlantic Coast Line was \$230,000 better; Central of Georgia was \$92,000 worse; Chesapeake & Ohio \$1,000,000 better; Florida East Coast \$136,000 worse; Illinois Central \$600,000 worse; the Louisville & Nashville \$2,000,000 better;

Nashville, Chattanooga & St. Louis \$111,000 better; Seaboard Air Line \$434,000 better; the Virginian \$52,000 better; the Chicago, Rock Island & Pacific \$129,000 worse; International Great Northern \$266,000 worse; Missouri, Kansas & Texas \$1,300,000 worse, due to the receivership which I mentioned; Missouri Pacific \$2,500,000 worse; St. Louis & San Francisco \$155,000 better.

I think I should also mention the Texas & Pacific, which I did not mention before, which in 1916 was \$228,000 worse.

Senator GORE. Could you tell, Mr. Trumbull, whether the net earnings of all the railroads in the country in 1915 were greater or less than in 1914?

Mr. TRUMBULL. Yes. In answering that, Senator, I can not deal exactly with it.

Senator GORE. I do not mean with reference to these particular roads, but all the roads in the country.

Mr. TRUMBULL. I can deal with operating income from the Interstate Commerce Commission reports.

Senator GORE. Yes.

Mr. TRUMBULL. The operating income shown in their printed report for 256,000 miles of road, practically all of them, was \$728,000,000 in 1915. For the previous year, 11,000 less miles, \$704,000,000.

Senator GORE. And do you have for the year before that in that table, 1913?

Mr. TRUMBULL. Yes.

Senator GORE. Give that, please, sir, and 1912.

Mr. TRUMBULL. That question brings me to the statement I was going to make next.

Senator GORE. Yes, sir. I did not want to cut across your statement. I thought for the purpose of comparison we should have that to see whether it was a graduated increase or not.

Mr. TRUMBULL. I will answer you right away, Senator.

Senator GORE. Yes, sir.

Mr. TRUMBULL. In the first place, you have asked me why I mentioned these figures. I have been assuming that in taking over the property the Government, or anyone else, will want to pay the fair value of the use at the time of taking. That is why I mentioned June 30, 1917, not because the figures were more or less favorable, but to bring you up as close as I could to the date of taking possession. When we look at what was done in England we see that they took over the roads upon the basis of the previous calendar year, which was the best year in the history of English railroads.

Of course England is not a large country as compared with this; therefore, the figures may not seem so significant in the matter of revenue.

England and Scotland and Ireland have an area of 120,000 square miles, about as big as the States of Indiana, Illinois, and Iowa.

Senator GORE. A little bigger than Colorado.

Mr. TRUMBULL. A little bigger than Colorado.

Senator GORE. And a little less than Montana.

Senator POINDEXTER. Will you please repeat that statement you made as to the area?

Mr. TRUMBULL. The area of the United Kingdom is about 120,000 square miles.

Senator POINDEXTER. Is that only the island of Great Britain?

Mr. TRUMBULL. No; that includes Ireland and Scotland. The total mileage of Great Britain was 23,700 miles of road, which is less than one-tenth of the mileage of the United States. But you will find in comparing the net receipts, as I stated, they took the best year the English roads have ever had, which was £52,000,000, and was \$3,000,000, or \$15,000,000 better than the average for three years.

Then in the French situation they did not have an emergency to deal with in this matter of compensation, and in all that I say about compensation I have in mind the question of railway credit, both during the war and after, which, it seems to me, is important, not only to the owners of the property but important to the Government and to the people of the country, particularly as these securities are nearly all owned now by our own citizens.

In France they had for years a guaranteed basis to the railroads.

Senator POMERENE. I did not catch that statement.

Mr. TRUMBULL. In France they had for a number of years an arrangement with the railroads under which minimum dividends were guaranteed, so they had no emergency to deal with.

Senator POMERENE. Dividends guaranteed by the Government?

Mr. TRUMBULL. Yes. Here is a statement I made before the Hadley Commission in 1910, a commission appointed to report upon the regulation of securities:

The Northern Line in France, which has a monopoly of the northern district, was guaranteed a minimum dividend of 13½ per cent on the stock, and the point beyond which the State shares in the excess is 22.1 per cent.

In the case of the Paris-Lyon-Mediterranean, the guaranteed minimum is 10 per cent, the State sharing in anything beyond 15 per cent, and so on, with slightly lower percentages, for the other companies.

This statement was made in 1910, and I scheduled here the dividends paid for the year 1906. On the Northern Railway of France they paid 18 per cent on the stock.

On the Eastern they paid 7.1 per cent.

On the Western they paid 7.7 per cent.

On the Orleans they paid 11.8 per cent.

On the Paris-Lyon-Mediterranean they paid 11.2 per cent.

On the Midi they paid 10 per cent.

Senator POMERENE. Does that condition prevail until the present time?

Mr. TRUMBULL. Yes.

Senator POINDEXTER. The guaranteed dividend on the Paris-Lyon-Mediterranean you said was 15 per cent?

Senator GORE. Ten per cent was the minimum, and the Government shared above 15 per cent.

Mr. TRUMBULL. Ten per cent was the minimum, the Government sharing in anything above 15 per cent.

Senator POINDEXTER. Guaranteed 10 per cent, but they earned over 11, I believe?

Mr. TRUMBULL. Yes, sir.

Senator POINDEXTER. And so in the Northern Lines they were guaranteed 13½ per cent?

Mr. TRUMBULL. Yes; and they paid 18 per cent.

Senator ROBINSON. What is the basis of the French guaranteed dividends, Mr. Trumbull?

Mr. TRUMBULL. The basis was upon the par value of the stock.

Senator ROBINSON. How closely was that analogous to the property value?

Mr. TRUMBULL. I can not say how closely.

Senator ROBINSON. You do not know, then, what relation the figures you have just given, guaranteed by the French Government to furnish railways, have to the proposition involved in this bill, the actual investment?

Mr. TRUMBULL. No. No doubt that could be ascertained prior to the war, but it would be very difficult to ascertain any later figures.

Senator GORE. Has the French Government pursued the policy heretofore of regulating the issue of railroad securities?

Mr. TRUMBULL. Yes; because they are guaranteed.

The CHAIRMAN. What document were you reading there?

Mr. TRUMBULL. That was a statement I made before the Hadley Commission in 1910.

Senator ROBINSON. What does the stock of these French railway systems generally represent, Mr. Trumbull, if you know?

Mr. TRUMBULL. It represents as it does everywhere else, the equity over and above the debt.

Senator ROBINSON. But you do not know what relation it bears to the actual value of the property?

Mr. TRUMBULL. No. I can say this, that the amount of stock is a comparatively small percentage of the total capitalization.

Senator ROBINSON. So that a guaranty of 11 per cent, for example, upon the stock of a French railway would not imply a guaranty of that per cent on the total capitalization by any means?

Mr. TRUMBULL. No; but the interest is guaranteed by the Government.

Senator ROBINSON. In addition to the dividend on the stock?

Mr. TRUMBULL. Yes.

Senator POMERENE. At the time this 18 per cent was paid on the stock, which was guaranteed to pay 13½ per cent, what were the stock quotations?

Mr. TRUMBULL. I have some quotations here in this statement.

Senator KELLOGG. May I just make a suggestion? Here is a table that gives the quotation of the stock, the railroad, the par value, the rate of dividends guaranteed, the revenue reserved to stockholders before division of profits, dividends paid, and the market price. It seems to me that it would be a good plan for that table to go in.

The CHAIRMAN. I think it would be.

Mr. TRUMBULL. I think there are only three copies of this document in existence, so far as I know.

The CHAIRMAN. We can have it reprinted.

Mr. TRUMBULL. This is a statement of Frank Trumbull before the Federal Railroad Securities Commission at New York December 22, 1910.

Senator GORE. And that was not printed?

Mr. TRUMBULL. It is in their proceedings; yes.

Senator UNDERWOOD. Mr. Chairman, shall we adjourn at 12 o'clock?

The CHAIRMAN. Yes.

Senator GORE. Is that a very lengthy statement, Mr. Trumbull?

Mr. TRUMBULL. The part about the French roads is not lengthy; no.

Senator ROBINSON. Would you object, if it is found desirable, to have the whole pamphlet go in the record?

Mr. TRUMBULL. Not at all.

Senator GORE. If you were to bring it up to date, would it add anything to the value of it?

Mr. TRUMBULL. I do not think it would have much value for what you are getting at, because these values are fixed.

[Extract from statement of Mr. Frank Trumbull, chairman of the board of directors of the Chesapeake & Ohio Railway Co. before the Federal Railroad Securities Commission at New York, Dec. 22, 1910.]

I think I am quite willing to admit that there might be a condition hereafter under which there would be some relation between rates and capitalization—governmental ownership, for example. However, notwithstanding many disturbances of the pendulum, democracy in America is quite intelligent enough to appreciate some of its limitations and the political dangers involved in too much bureaucracy. So suggestions of governmental ownership thus far have been dismissed with scant courtesy. If one corporation owned all the railroads of the United States, the relation between the sum of all the rates (after deducting operating charges) and the sum of all the capital would become more conspicuous; but as practical men we must, I think, dismiss that idea also. Next to that it would seem that some profit-sharing plan between the Government and private capital might be arranged, as has been done with the street railways of Chicago. Under such a plan the Government ought to guarantee a minimum return and participate in the profits above a certain higher rate of return. But the practical difficulties in the way of governmental guarantees and profit sharing with railroads (unlike street railways) handling thousands of different commodities of human need and the transportation of persons and property from place to place through 48 States and Territories present obstacles which seem insuperable under our railroad methods. For example, what would our Government guarantee to the Pennsylvania Railroad as against the Erie? What would it guarantee to the Union Pacific as against the Denver & Rio Grande and Western Pacific, and so on? I think I can demonstrate what I have in mind if you will permit me to read just an extract or two from an article about the French railroads in the *Encyclopedia Americana*. I do not vouch for the accuracy of all its statements; but having had some opportunity in France for investigation and inquiry, I believe that the extracts which I shall read are substantially correct. This article says:

"Parallel lines were forbidden as a matter of course, and competition was not conceived of as among the possibilities of the situation. When they got to the year 1859 they (France) adopted the plan of guarantying the bonds of the railroads. This guaranty made the bonds instantly marketable and very valuable. In 1865 a further plan was proposed in the Chamber for the construction of a network of local roads, not to belong to the six companies, and the municipal authorities were given the right to subsidize such lines."

This article goes on with a history of these local lines and what became of them. They were absorbed by the six grand lines.

"There was some delay; but beginning with 1884, the last comprehensive scheme was decided upon, the leading points of which were these: First, that the State should confine its own railway operations to the small districts in the southwest occupied by what is known as the 'State line.'"

I should say that within the last two years or so the Government bought the lines at the west, not, as I understand it, because of any overwhelming demand from the people in that district, but as a concession to the Socialist Party. The article continues:

"* * * That consolidated lines which the State owned in various parts of the country should be taken over by that one of the six great companies in whose territory it lay; second, that additional lines as needed should in future be constructed only by companies in whose district they belonged; third, that the State should guarantee each company the minimum dividend, and that when the amount available for dividends exceeded a certain percentage—the rate differing for each line—two-thirds of the excess should go to the State. The limit, however, was placed so high that this provision has been practically

inoperative. Thus, for example, on the northern line, the guaranty minimum dividend is 13.5 per cent, while the point beyond which the State shares excess is 22.1 per cent. In the case of the Paris, Lyons & Mediterranean, the guaranty minimum is 10 per cent, the State sharing anything beyond 15 per cent, and so on, with slightly lower percentages for the other companies.

"All lines in France, with one exception, are owned and operated by private companies. They are concedeés and become State property upon the expiration of the concessions. The concessions were due to fall in, first in about 40 and later in 90 years. When this occurs—about the middle of the present century—the Government will, it is claimed, become possessed of an asset in the railways sufficient in realizable value to pay off the full national debt. Passing the matter of the State guaranty of interest and dividends, it may be said that the net earnings of the six private companies have been upon an average far beyond anything accomplished elsewhere in the world in that respect from railway operations. The French plan, as is seen, forces the numerous independent companies to work in harmony with one another while giving each of them an absolute monopoly in its own territory. Whatever slight attempts have been made in the Chamber (Parliament) to check or prevent combination or monopoly have been promptly overruled as contrary to the general scheme."

I have also prepared and have here a statement of the six grand railways of France, giving the market price of their stocks on November 25, 1910, which is the latest data I have been able to get. This table shows the rate of dividends guaranteed, the revenue reserved to stockholders before division of profits, and the dividends paid.

Six grand railways of France.

[From railway report of the French Government for the year 1906.]

	Par value of stocks (francs).	Rate of dividend guaranteed.	Revenue reserved to stock- holders before division of profits.	Dividends paid.	Market price Nov. 25, 1910, per 100 francs.
		<i>Per cent.</i>	<i>Per cent.</i>	<i>Per cent.</i>	<i>Per cent.</i>
Nord.....	400	13.525	22.125	18.0	407
Est.....	500	7.10	10.10	7.1	175
Ouest.....	500	7.50	10.0	7.7	186
Orleans.....	500	11.20	14.40	11.8	296
P. L. M.....	500	11.0	13.50	11.2	244
Midi.....	500	10.0	12.0	10.0	226

Division of profits: Two-thirds to the State, one-third to the stockholders in all companies. The surplus of net revenue, after deducting the guaranteed dividend, is paid to the State is necessary to reimburse it for advances made on the guarantee with 4 per cent interest (on the Midi 3 per cent). Once these advances are reimbursed, the excess of net after paying the amount per share quoted in column 3 is divided two-thirds to the State, one-third to the stockholders.

Perhaps I should say that in a country which is supposed to be devoted to race suicide they seem to be doing more than we for posterity, because their annual returns include an amortization of the capital, so that in about the middle of this century the French Government will come into possession of a large railway system without further payment except for rolling stock and stations. In the meantime the earnings (and consequently the rates) must be sufficient to take care of the amortization and the liberal dividends mentioned.

All this may seem like a digression, but it seems to me to illustrate what might be done in this country if the railroads could be divided into groups. If, for example, the Pennsylvania Railroad could be permitted to buy all the railroads in its territory, the Union Pacific all the roads in its territory, the Great Northern in its territory, and so on. Of course, a group in New England would require very different treatment from a group in Texas, but the French situation seems to be of value as an illustration of what we are not.

We have a Sherman antitrust law under which it would not be possible to do what they have done in France. This law entails a tremendous economic

waste in the matter of duplication of train service and otherwise, but our country evidently prefers to have the law and pay the price. So, then, viewing the subject practically as we must, we seem to be relegated, for the present at least, to dependence solely upon private capital as an employee of the people, and I suppose we ought not to be surprised if that employee, like other employees, shall desire to have something to say about its compensation and the conditions under which it shall perform its work.

The CHAIRMAN. The hour of 12 o'clock having arrived, the committee now automatically stands adjourned until 2 p. m.

Senator WATSON. Before that is done, there is just one statement about the French system that I would like Mr. Trumbull to put in in connection with what he has just said.

The CHAIRMAN. Just let him keep that in mind, as the committee is somewhat in confusion.

(Whereupon, at 12 m., the committee took a recess until 2 p. m. of the same day.)

AFTER RECESS.

The committee met pursuant to the taking of recess at 2 o'clock p. m., Senator Smith (chairman) presiding.

The CHAIRMAN. The committee will come to order. You may proceed, Mr. Trumbull.

STATEMENT OF MR. FRANK TRUMBULL—Resumed.

Mr. TRUMBULL. Just before we adjourned I was asked a question about the prices of stocks of the French railways. This statement by me was made seven years ago, and I appended to it the prices as of November 25, 1910. The stock of the Northern Railway of France was quoted at 407.

Senator KELLOGG. That is francs?

Mr. TRUMBULL. No; 407 per cent of par. The Eastern Railway, 175 per cent of par; the Western Railway, 186 per cent of par; the Orleans, 266 per cent of par; the Paris-Lyons, Mediterranean, 244 per cent; the Midi, 225 per cent.

In the meantime the French Government had taken over the Western Railway of France and a line running to the southwest.

These prices that I have enumerated are all the prices of stocks of private corporations, and those private corporations are still owners of those properties.

Senator ROBINSON. Did you pursue your investigation to determine whether the market price of those stocks bore any relation to the net operating income of the roads?

Mr. TRUMBULL. No. You could not relate that, Senator, except by adding the debt to the stock, but it does bear a relation to the net corporate income after deducting the interest.

Senator ROBINSON. Did you investigate to determine what was the basis of the wide variance in the prices of these stocks?

Mr. TRUMBULL. The wide variance was partly due to the difference in dividends paid and partly due to the earnings.

Senator ROBINSON. If it will not divert you in this connection, I would like to ask if you heard the discussion while Mr. Kruttschnitt was on the stand, of a suggestion that the earnings return under

Federal control be determined upon the basis of the market value of the stocks. You heard that discussion, did you?

Mr. TRUMBULL. Yes, sir.

Senator ROBINSON. Do you concur substantially in the opinion expressed by Mr. Kruttschnitt concerning the practicability of such a basis?

Mr. TRUMBULL. Absolutely, the impracticability of it.

Senator ROBINSON. You regard it as totally impracticable to determine the question of earnings upon that basis, or any basis related to that?

Mr. TRUMBULL. I would not say, Senator, that anything that can be done is impracticable, but I do think it would be very inequitable and I think it would be a damage to the credit of these railways, not only hereafter but during the war period, and it would be very serious.

Senator ROBINSON. You may proceed, Mr. Thom.

Mr. THOM. You are going to refer at length to that in your testimony?

Mr. TRUMBULL. Yes.

Senator ROBINSON. I did not mean to anticipate you. I would not have asked you, if I had known that.

Mr. TRUMBULL. I should say about these French railways before I leave that subject, that each company has a monopoly in a certain district. Whenever competition has shown up the Government hit it on the head. The Government guarantees the interest on all the debt, these dividends which I mentioned on the stock, and besides that is amortizing the whole capital, including debt and stock, so that between 1950 and 1960 the Government will be the owner of all the roads without any further payment except for rolling stock, material and supplies, and miscellaneous items of that kind which would have to be inventoried.

Senator ROBINSON. Will you state when the Government embarked upon that plan in France?

Mr. TRUMBULL. It is an evolution over a long period. The last agreement, I think, was made in the 1880's.

Mr. THOM. Without any further payment than what? Without any further payment than these dividends?

Mr. TRUMBULL. Without any further payment to the owners. The owners will, in the meantime, get their money back, not only for the debt but for the stock.

Mr. THOM. Not through the medium of the dividends, but in addition?

Mr. TRUMBULL. Not through the medium of the dividends. Here is a report of the Board of Trade of Great Britain on the railways in Belgium, France, and Italy, printed in 1910. You will find on page 143, in dealing with the French railways, they say:

The guaranteed revenue of a railway exists in the dividend fixed by the convention for the share capital, the contributions to the sinking fund of the share capital, and the interest and contribution to the sinking fund on the debenture capital.

So that the French nation is doing something that no other country is doing. They are paying for the railroads for posterity, and, of course, they are paying for them out of the rates; that is to say, the rates are high enough in France to not only pay the operat-

ing expenses and taxes and interest on the debt and these dividends on the stock, but are also high enough to amortise from year to year the capital itself.

Senator KELLOGG. Have you any knowledge about the average rate of income of the English railroads for years back?

Mr. TRUMBULL. You mean the return on the property?

Senator KELLOGG. The return on the property; yes.

Mr. TRUMBULL. Yes; I have a statement here, Senator. For the year 1914 it is 3.91 per cent.

Senator KELLOGG. That is on property invested?

Mr. TRUMBULL. On the capital. It would roughly approximate the property. For the year 1912, 3.55 per cent; 1911, 3.67 per cent; 1910, 3.59 per cent; 1909, 3.43 per cent; 1908, 3.32 per cent; 1907, 3.47 per cent; 1906, 3.45 per cent; 1905, 3.42 per cent; 1904, 3.39 per cent; 1903, 3.43 per cent.

I should say, Senator, concerning the capital, it includes a good deal of what they call nominal capital, or what we would call in this country "watered stock." Their capital account for 23,000 miles of road is about six and one-half billion dollars; that is to say, nearly \$300,000 a mile.

Senator CUMMINS. What roads are you speaking of?

Mr. TRUMBULL. The roads of Great Britain. You will notice, if you will follow those figures, that not only was the money more in 1913 in the way of net revenue than in any year, but so was the return on the capital.

Senator KELLOGG. Do you know what the policy of the English railroads has been in the last 25 or 30 years, or longer, as to additions, betterments, and improvements, whether they have been capitalized or whether they have been paid largely out of income?

Mr. TRUMBULL. They have been nearly all capitalized. Here is a figure that will answer you, I think. The profit and loss account of 1913 of the British railways: They had net receipts of 52,000,000 pounds; and they paid out for interest 11,000,000 pounds, roughly, and in dividends 35,000,000 pounds, so that they actually paid to the debenture holders and the shareholders 46,000,000 pounds out of 52,000,000 pounds.

Senator KELLOGG. Are you familiar with the general trend of the market price of British railway stock, as to whether during the last 10, 15, or 20 years they have materially declined year by year or gone up in value?

Mr. TRUMBULL. I am not familiar with that.

Senator KELLOGG. If you have not examined it I will not ask you about it.

Senator McLEAN. Have you made any comparison between the transcontinental lines in this country and the Canadian lines as to the cost of capitalization per mile and rates?

Mr. TRUMBULL. I have not made any comparison, Senator. We have figures showing the total capitalization and the average per mile on American railroads as compared with all the railroads of the countries of the world.

Senator McLEAN. But you have made no particular comparison?

Mr. TRUMBULL. Not by single lines.

Senator McLEAN. And you have no statistics showing the Canadian rates and the original cost?

Mr. TRUMBULL. Not by roads, no. When you say "rates" do you mean rates on freight?

Senator McLEAN. I mean both, per ton-mile rates for freight and the passenger rates and the cost of construction.

Mr. TRUMBULL. The average ton-mile rate in Canada is about the same as in the United States, and I can give you the cost per mile or the book value per mile of the roads as a whole, as compared with our roads.

Senator McLEAN. Some of the Canadian roads are Government-owned and some are not?

Mr. TRUMBULL. Yes. The Government-owned roads have very large capitalization. We will have those figures here in a few minutes, Senator, by countries.

Senator KELLOGG. I was under the impression that this policy of capitalizing most of the improvements, betterments, and additions had been rather disastrous to the market price of British railway stocks, and that they had declined very materially in the last few years.

Mr. TRUMBULL. I know they have declined very materially since the outbreak of the war.

Senator KELLOGG. No, I mean before that; but I may be wrong about that.

Mr. TRUMBULL. Of course, that touches on the edge of a very interesting question. I should think in this country that it would be bad policy to pay out such a large proportion of the net earnings, and they are going to have a real problem in England after the war, partly on account of their policy.

Senator CUMMINS. Before you leave that, Mr. Trumbull, I think possibly you have answered this inquiry; but I was a little late in getting in. How much did the English railways pay out in interest on indebtedness for the year 1913?

Mr. TRUMBULL. I just stated that—£11,449,000.

Senator CUMMINS. How much did they pay out or declare in dividends?

Mr. TRUMBULL. £34,944,000.

Senator CUMMINS. How much had they left after they paid the interest upon their debts and their dividends?

Mr. TRUMBULL. A little under £6,000,000.

Senator CUMMINS. Did you give either the property account or the capitalization account for all the English railroads?

Mr. TRUMBULL. Yes.

Senator CUMMINS. Will you state that again, please?

Mr. TRUMBULL. The capitalization account is in pounds. It was about six and one-half billion dollars on 23,700 miles of line, which is nearly \$300,000 a mile.

Senator CUMMINS. Have you put down in figures there the percentage of surplus after payment of interest and dividends to the capitalization?

Mr. TRUMBULL. They paid out about 89 per cent in interest and in dividends.

Senator CUMMINS. What I asked was the percentage of surplus over after paying interest and dividends to the capitalization?

Mr. TRUMBULL. Forty-six one hundredths of 1 per cent.

Senator CUMMINS. What was the average rate of dividends paid in 1913?

Mr. TRUMBULL. A little under 3 per cent on the whole capitalization.

Senator CUMMINS. What was the average rate of interest paid on the debentures?

Mr. TRUMBULL. Excuse me, Senator. In the matter of dividends, I applied it to the whole capital, which, of course, is not right. I have not the stock separate.

Senator CUMMINS. You mean you have not the figures before you tabulated so that you could tell quickly, or have you them at all?

Mr. TRUMBULL. I have not the stock separately. You have asked for the return on the stock, the dividends paid on the stock.

Senator CUMMINS. What was the average rate of dividends paid?

Mr. TRUMBULL. I will have that calculated.

Now, if I may leave this matter of the figures by individual roads, and the treatment of railroads by England and France, I would like to go on to a statement of the returns on the roads as a whole.

This is a photograph of a page in the Interstate Commerce Commission report, and I would like to ask your attention to this fact about the year 1915. Practically all the roads included here have not stated the net operating income because they did not have it, but a statement of income from operation, and for my statement is just as useful, because it shows the relativity.

For the year ended June 30, 1915, the income from operations from the roads as a whole, was \$728,000,000. That was the lowest return since 1906, with the exception of two years, the lowest return in money, and, of course, the rate of return on the investment was correspondingly lower.

I have here a statement that was presented, I believe, by Mr. Anderson, Interstate Commerce Commissioner, before the House committee, giving his estimate for the three years ended June 30, 1917, as about \$935,000,000, including the small roads.

What I want to call your attention to is that the year 1915 was about \$300,000,000 less than the year 1916 or 1917.

Another thing I would like to ask your attention to is that the plant turned over to the Government on the 28th of December, 1917, is not the same plant that earned the dollars that I have quoted.

We can only approximate the additions to property in the last six months, but we state them approximately as \$240,000,000, and the plant which was turned over to the Government in December, 1917, was roughly \$649,000,000 more than the plant that earned the money for the year ended June 30, 1916, and the plant turned over to the Government in December, 1917, was \$934,000,000 more than the plant that earned the returns of 1915; so we feel that this bill should make provisions, whatever years are computed, for allowing a revenue ratable to the additional plant which was turned over to the Government.

Of course, it might be said that the years 1916 and 1917 were boom years, but as I indicated this morning, I want to address myself mostly to the question of credit.

The commission in the Eastern Rate case, in 1914, just before the European war broke out, made a statement that the earnings of the years which they had under consideration were inadequate, and yet

the following year, after their decision, notwithstanding a partial increase in rates, did not yield the railroads as much net operating income as the years they had under discussion, when you consider the difference in property.

Then we come along to the years 1916 and 1917, entering upon absolutely new conditions in the matter of railway credit. In the meantime probably \$1,500,000,000 of American railroad securities had been returned from Europe, and either were liquidated immediately, or were in process of liquidation, which, of course, affected the price of every bond and every stock.

In addition to that, there were tremendous demands by Governments for loans, all of which made a strain on the money market, with the result that in 1917, the year in which the Interstate Commerce Commission made a special report to Congress to give the railway subject special treatment, there was almost no new financing of railroads.

In the year 1917 there were only about \$40,000,000 of new railway stock listed on the New York Stock Exchange. Twenty-five million dollars of that was the New York Central issue, which had to be listed in order to be offered to its shareholders.

When they started to do that the stock was over par, and before the date arrived for the stockholders to take it it was below par and the issue failed. So the total financing of new railway property by stock in the year 1917 was only about \$15,000,000.

Of course, you may say, as people usually do say when they are talking about railroads, What about their power to borrow money? And I think that reveals a weakness in the whole credit situation of the railroads that has to be corrected sooner or later.

There is, roughly, \$10,000,000,000 of debt on these railroads and \$6,000,000,000 of stock in the hands of the public. Now, manifestly, there are very few first-mortgage bonds or second-mortgage bonds, because there is no new construction. Therefore, the only thing that railroads can offer is bonds of inferior rank at very low prices, or what is equivalent to the same thing, at very high rates of interest, and it is manifest the more debt a company has in relation to its stock the harder it is to sell its increasing issue of debts.

So we have arrived at this situation: First, because of the great volume of securities returned from Europe, and, second, because of the large governmental loans, and, third, by the very attractive profits in industrial shares; we have arrived at a situation where railroads have found it almost impossible to finance either with debt or stock. There is nothing ahead but trouble for the railroads, as a whole, if they can not finance with stock. That is just as manifest about the railroad situation in the United States as it is about an individual.

If you go to a bank and want to borrow \$1,000, and you have only \$600 of your own money invested, the bank will probably ask you to either pay out of your profits something into additional property, or to raise it in some other way. Manifestly, if you increase that \$1,000 to \$1,100 or to \$1,200 or to \$1,500 on the same foundation, you are headed for trouble.

So that no treatment of these railroads from a credit standpoint that perpetuates that condition can be satisfactory.

In other words, the year 1915 was, as I have told you, less in money than six previous years out of eight. It was much lower in return, and that pulls down the average compensation, and the rate of returns of 1916 and 1917 were not adequate to get new money.

Now, I take it that you will want to know what is necessary to get new money for these properties on a safe basis, and it is not sufficient simply to compare 1917 with 1915 or 1914, or any other year. It must be compared with the facts that confront us, and if the Government under this bill is to lend money to the railroads it will naturally make its loans mostly to railroads which are not in a first-class financial condition, and the Government will want to see to it that it gets adequate security, so your Government financing under this bill is at stake as well as the future credit of the roads.

May I answer your question now, Senator Cummins? The rate of the return on the stock of the English railways?

Senator CUMMINS. Yes.

Mr. TRUMBULL. On the ordinary stock, 4.61 per cent; preference stock, 4.08 per cent; guaranteed stock, 4.65 per cent; loans, 3.55 per cent; debenture stock, 3.93 per cent; all classes, 4.27 per cent; that is, after excluding nominal additions.

Now, I would like to make clear my point about compensation. In my opinion, whatever years are taken, the computation should be made ratably with the new property, because the Government is taking over more property than was in the hands of the companies when those earnings were made.

The CHAIRMAN. Your contention, then, is that the computation should be made including the years already suggested, but extending them to December 28 rather than to June 30?

Mr. TRUMBULL. No. It was not my idea to extend the money, but, taking the 1915 earnings, the 1916 earnings, and the 1917 earnings, raise them ratably in money to the same ratio as the increase in property.

The CHAIRMAN. In other words, calculate what would be the earnings of the additional capital upon the basis of the earnings of the capital already computed up to June 30?

Mr. TRUMBULL. Yes; the total investment, including the new, would naturally have yielded a larger return or else there was no use of making it.

The CHAIRMAN. Have tables been submitted showing the increased earnings of the road up to December 28?

Mr. TRUMBULL. We have a table here, Senator, which increases it along the line I have suggested; that is, ratably.

Senator ROBINSON. He stated that his estimate was that \$240,000,000 had been put into the property since June 30, prior to the taking over, up to the time of taking over.

Mr. TRUMBULL. Yes; and more than that, Senator. There was \$934,000,000 since June 30, 1915.

Senator ROBINSON. How much?

Mr. TRUMBULL. \$934,000,000 more property than on June 30, 1915.

Mr. THOM. Repeat the figures of the greater amount.

Mr. TRUMBULL. Yes. I gave these figures before, but here they are. We estimate an addition to property between June 30, 1915, and December 31, 1917, of \$934,000,000. Between June 30, 1916, and

December 31, 1917, \$649,000,000, and between June 30, 1917, and December 31, 1917, \$240,000,000.

Senator TOWNSEND. Some of them are doubled, are they not, to include in the first and what is in the last, too?

Mr. TRUMBULL. Yes, sir. The \$934,000,000 includes the \$240,000,000, but my point is that the 1915 earnings were on a property that was \$934,000,000 less than we turned over.

Senator CUMMINS. All that means is that the Government is taking the property as it was on the 31st of December, 1917, and that it ought to pay you just compensation for the use of that property!

Mr. TRUMBULL. Yes, sir.

Senator CUMMINS. That is what it means.

Mr. TRUMBULL. Yes, sir.

Senator CUMMINS. Which is a very proper and necessary position.

The CHAIRMAN. Was the new investment operative? Was it operative fully? Was the full capacity of it reflected in the returns for 1916? Contention was made here, or the suggestion was made that certain investments were made which, in their returns, could not be manifest within that period. If you have invested say \$600,000,000 during a certain fiscal year, was that operative, and would it be reflected in the returns?

Mr. TRUMBULL. It ought to be; yes, sir.

The CHAIRMAN. Does it so appear in the returns made by your road?

Mr. TRUMBULL. Of course, sir, there are a great many cross-currents, you know, such as increase in wages, increase in material, which would affect the net operating income, pulling it down, but there could have been no use of putting in that additional property and putting it at the service of the public unless it was to yield a return, and my suggestion is that the return of 1915 and 1916 and 1917 ought to be raised ratably in the computation, because the Government takes over more property.

I have a computation made here, based upon the average property return, and income for the three years, and this is again on 86 per cent of the mileage, which would make a difference of about \$31,000,000 in money, in operating income.

The CHAIRMAN. Have you a table showing what would be the rate if you were to compute it on the basis of the full equipment as shown, even up to June 30, 1917? That is, if the Government were to allow you compensation on the basis of June 30, 1917, taking that year alone, which would take in all of your added investments, what would be the rate upon the investment? We have a table here before us from the Eastern roads showing that upon the proposition it would be for those roads 5.54 per cent. Have you a table showing what it would be for the roads that you are speaking for?

Mr. TRUMBULL. Here it is in the statement I presented this morning, on the first sheet. We took the average property investment for the three years and applied average net operating income to it, which yielded a return of 5.22 per cent. We applied to the same average net operating income, a property investment as of June 30, 1917, which is your question, and it brought down the average return to 5.07 per cent, and it is even lower if you go up to December 31, bringing it down to 5.04 per cent. That is to say, we will not get the same rate

of return on our property, unless you make allowance in your computations for this.

May I call your attention to one more thing in this table from the Interstate Commerce Commission report?

On July 1, 1907, they applied stricter and more accurate rules about property accounts than they had ever done before, although the commission had been in existence for 20 years, and they make reference to that fact in some of their decisions.

In the Eastern rate case, they discarded the bonds and stocks as a basis for computing rates and said, that while the property accounts prior to July 1, 1907, were not accurate, in some cases they were too little and in some cases they were too much, yet, as the years go on, the relative disturbance gets less and this statement here of the Interstate Commerce Commission shows a property account on July 1, 1907, of \$13,000,000,000, and on July 1, 1916, of \$17,500,000,000. That is, \$4,500,000,000 increase in property account in nine years from the time their accurate bookkeeping commenced. I would like to ask your attention to the fact that that is over one-quarter of the whole property account of the railroads accruing in 90 years. When we bear in mind the capitalization of these roads, as compared with the roads of any other country in the world, we have always planted our feet upon the proposition that as a whole these properties are worth all of their capitalization, or, to put it in another way, the total of their book value represents property.

Now, there is no way of proving it by individual roads, but if one-quarter of the whole property account accrued in 9 years out of 90 years, under the strictest accounting with the commission, we think that the other three-fourths is an underestimate instead of an overestimate of the real value of the property.

May I call your attention to another thing besides the addition to property which I have just mentioned. Some roads have recently opened new lines on which there are no returns at all in this test period. The Norfolk & Southern wrote to me. They had some new mileage that they wanted considered. The Seaboard Air Line has not got the full value of new lines. The Chesapeake & Ohio, with which road I am connected, built a piece of road across the Ohio River to help move the tremendous coal traffic to Lake Erie that originates in West Virginia and Kentucky. That did not come into operation until October, 1917, three months after this test period.

I spoke this morning of roads recently reorganized. In those cases the security holders have sacrificed their interest and had the dismal satisfaction of having it scaled down in a reorganization and devoted the money which they sacrificed to buying new equipment, which they naturally think ought to be considered.

May I say also, in connection with these new organizations, that this capitalization of the railroads, is very considerably made up of reorganized capitalization, in which a great deal of debt was converted into stock.

I touched upon the question of roads specially situated like the Missouri Pacific and the Missouri, Kansas & Texas, and some other roads that have either been reorganized or are in process of reorganization, referring particularly to the excessive maintenance during that period, and as I said, the 1915, and 1916, and 1917 figures,

included a catching up process in the matter of maintenance, and if the companies had gone along normally without being taken over by the Government under the guaranty, they would have the benefit of that in their net operating income. No doubt some of these individual roads will want to make special presentation.

Then one of our important companies mentioned particularly, notwithstanding a severe strain upon them financially, they have succeeded in putting a good deal of money in the last year or two into betterments, which will yield them, they think, a very handsome return. That is to say, more than six or seven per cent. Of course, if it does not yield them any better rate than they pay out there could be no object in doing it. They think it will yield more, and under this proposition the Government will get the benefit of it.

May I say a word about compensation in the matter of leased road rents? Under the bill, those are excluded. Some of these leases are upon a sliding scale basis, a percentage of gross earnings, or net earnings, or what not, and we are assuming that if those contracts are to be carried out the Government will not want the lessee company to lose the increase in the cost of the lease.

I would like to say a word in connection with this matter of credits, particularly about what is known as the "weak roads." I, for a long time, have entertained the opinion that no scheme of regulation or compensation by the Government, whatever form it may take, will be satisfactory to the people of the United States that does not make the weak roads stronger. They are relatively just as important in a continental railway system as the strong roads.

Take the matter of moving coal between the Ohio River and Lake Erie. There never is a month that business has not been retarded. That is to say, they did not do a 100 per cent business. Somebody's business is not moved at all, and some is not moved promptly.

I would like to recommend to you for special consideration such a treatment of those weak roads as will make them as serviceable to the hundreds of thousands of people that are dependent upon them as so-called strong roads are to the millions of people dependent upon them. The people on the weak line are just as much entitled to good service as the people on the strong lines.

Senator TOWNSEND. How is that involved in this proposition, Mr. Trumbull? Is it not the business of the Government to use those roads under this scheme for the benefit of the people generally?

Mr. TRUMBULL. Yes; but, as I said this morning, generally Mr. Kruttschnitt has covered the operating questions so adequately that I wanted to address myself to the question of credit. Any scheme which leaves these weak roads in a continued weak position is not an adequate service to the people of the United States.

Senator TOWNSEND. That is, when the Government runs them?

Mr. TRUMBULL. Yes; and in the meantime suppose a road needs capital, they can not offer gilt-edge security; you can not take their stock, probably, because it is at such a low price; and that has been largely brought about and an excessive debt has been largely brought about by State taxes, prohibiting any sale of stock at less than par.

Senator TOWNSEND. If the Government wants to lend money to the weak roads, it can do that.

Mr. TRUMBULL. If the Government lends money to the weak roads to help them out, they will have to take a pretty poor security.

Senator TOWNSEND. Is not that a matter depending entirely upon the administration of the roads after the Government gets them, as the bill provides for the loan or the use of a large amount of money, and not upon the Congress? Would you advise that this committee report anything on that subject?

Mr. TRUMBULL. No; I think, though, that it is very important in connection with section 8. There is an opportunity for a road that is not satisfied to go before a tribunal and state its case, and I think that tribunal ought to give special consideration to the service that weak routes can perform when it comes to lending money. In other words, their compensation during the period ought to be generous enough so that the Government can finance them safely and leave them in better shape at the end of this period than they were before.

Senator TOWNSEND. I think you hit the real difficulty of railroad operation when you are speaking of that or discussing that, but I am wondering how this committee could act upon it and what it could do relative to that matter.

Mr. TRUMBULL. You can help a great many of them by excluding the year 1915 if you wanted to help them.

Senator TOWNSEND. I imagine that those roads will ask for compensation under the general law rather than under this act.

Mr. TRUMBULL. The application of it to my mind, and I agree with you, Senator, that it is a very important feature of the ultimate solution of this railroad question and an important feature in the public interest; but, so far as this law is concerned, what I have said here about these special cases and what I have just said about the weak roads seems to me makes it important that the determination by this tribunal shall not be simply a piece of clerical work.

Take the matter of maintenance during the war period. There will be bristling questions of how much the maintenance ought to be, relative to the quantities, and about the prices, and so on, and that tribunal should be so constituted that it can deal in a big way with all these questions, and not be relegated to a mere piece of clerical work.

The CHAIRMAN. The question that I wanted to ask was, these roads being weak, their weakness is on account of the fact of their going through unremunerative territory.

Mr. TRUMBULL. It is due to any number of things, Senator. Of course some roads are very much better located than others for business. Some are very much better situated in the matter of credit.

The CHAIRMAN. The point that I wanted to get you to define was how this help to these weak roads was to be brought about, except by allowing them a more liberal return until their equipment and their facilities for handling the business which they could handle, if they were equipped to handle it, and until they get the additional business. In other words, are they potentially able to do it, if they had the equipment, or is it a proposition for a subsidy to them to equip them?

Mr. TRUMBULL. I would not advocate any subsidy, but they should have generous treatment in the matter of this compensation, if they are to serve the public effectively.

The CHAIRMAN. If the Government had not taken them over at all, would you mind indicating along what line they could have, under the laws as they now exist, become more efficient?

Mr. TRUMBULL. They could not become efficient the road we were traveling. It could not have been done.

The CHAIRMAN. Even if the Government had not taken them over under existing law?

Mr. TRUMBULL. No. The road we were traveling, because the rates were not increased. The commission said in the Eastern Rate Case that the rates which were before them were inadequate, and yet they denied the increase. Subsequently they made a partial increase. In 1917 we asked for another increase, but did not get it.

The CHAIRMAN. That applied to the strong roads as well as the weak.

Mr. TRUMBULL. As well as the weak; yes, sir.

Senator McLEAN. In what class would you put the New Haven road?

Mr. TRUMBULL. I should put it in a class of a very good public servant, financially weak.

Senator McLEAN. It runs through a pretty good class of territory.

Mr. TRUMBULL. Yes.

Senator GORE. A good road gone bad. Mr. Trumbull, is it not a fact that most new roads doing pioneer work in virgin territory do have to anticipate a number of lean years?

Mr. TRUMBULL. Yes; they always have, Senator.

Senator GORE. I assume it is like any other business—that they discount that in advance, consenting to take a loss over a limited period of years, in anticipation of reasonable return when the business is well established.

Mr. TRUMBULL. Yes.

Senator GORE. The reason I am asking you, Oklahoma is a new State, and we have several roads there which I think fall into this category, and such new roads I assume are naturally in a category of their own. I refer to the Midland Valley, the Fort Smith and Western, the M., O. & G., and the Wichita Falls road. Perhaps you are familiar with some of them.

Mr. TRUMBULL. Yes, sir.

Senator GORE. Those are new roads, and they went into virgin territory that needed railroad service, but some of them at least, have not been remunerative up to this time. Now, I understand that during the last year their business has been better than formerly. Now, I take it that that is a category that is exceptional in its nature and ought to call for some sort of exceptional treatment. If you have any suggestion to make on that point, I would be glad to hear from you, because I feel sure that the committee wants to do justice to those roads, and they are staggering to get on their feet, and we certainly do not want to hit them on the head.

Mr. TRUMBULL. I think each one of those roads will be before this tribunal, whatever it may be, and all you can deal with here is to give comprehensive powers and to try to work out a tribunal that understands the question, all these questions that we have been discussing.

There are some roads which I have not mentioned yet, not in my list here, but that I have heard from independently of my list, that

had an operating deficit during the three-year period, and they are naturally inquiring what their guaranty will be.

Senator GORE. I wanted to ask you if you did not consider that new roads did constitute a category that required special treatment.

Mr. TRUMBULL. Yes.

Senator GORE. Mr. Dustin was here yesterday and made a very clear statement. He spoke of his own road, but I thought that you might furnish some light upon the subject that would be entirely free from any connection with the road.

Mr. TRUMBULL. I think the best suggestion that I can make, Senator, is that in enacting this legislation, you should see to it that the right kind of a tribunal is created to deal in a broad and intelligent way with all these complicated questions that are going to arise.

Senator GORE. I was wondering if it would be possible to arrive at some point in the time when the revival of railroad construction took place, just after the hard times in the nineties, so that roads that have been built since that time, which are still new roads, might be entitled to some special treatment, might be segregated, and entitled to special consideration.

Mr. TRUMBULL. But do you not think that the tribunal ought to deal with the facts, and not with the date of the construction?

Senator GORE. That is true. If you undertake to open the door too wide, however, you can not get it open at all. That is the point. A proposition was made here yesterday which would have opened this matter to every road in the country, and I do not know whether that will be possible or not, but these roads clearly constitute in everybody's judgment an exceptional class.

Mr. THOM. Senator, we do not open the door to any unless we get by the President. He holds the door.

Senator GORE. Someone made a proposition yesterday, I do not remember just who it was, or what it was—

Mr. THOM. I think you are referring to Mr. Dustin's suggestion.

Senator GORE. Yes.

Mr. THOM. That is put absolutely in the hands of the President.

Senator GORE. Yes; it was Mr. Dustin's suggestion that if the roads were not being compensated, if the returns were not compensatory, that they would be entitled to an increase in rate not to exceed current obligations. If it is to be left open to all roads, we practically do nothing when we take action here. I do not think that would be possible, and yet there are other roads that I do not think anybody would want to deny the opportunity to make out a case, because admittedly the facts justify them to do that.

Senator CUMMINS. Mr. Trumbull, when you spoke a moment ago about dealing with some of these roads in a clerical way or that you thought that they should not be dealt with in a mere clerical way, but in a big way, did you refer to the method of ascertaining compensation under section 3 of this bill?

Mr. TRUMBULL. It depends upon the construction of the word "auditors." If that means accountants, I should say "yes."

Senator CUMMINS. The bill authorizes the Interstate Commerce Commission to appoint three auditors, either of its own number or out of its own forces.

Mr. TRUMBULL. Yes.

Senator CUMMINS. But when they are appointed, assuming that they are competent men, they are charged with the duty of finding out what is just compensation under the rules of the law.

Mr. TRUMBULL. Yes.

Senator CUMMINS. And from their award, either the carrier or the Government, I believe, can appeal to the Court of Claims. So it would seem to me that that section provides in rather a broad fundamental way for the ascertainment of just compensation upon a proper basis.

Mr. TRUMBULL. Are you satisfied, Senator, with the word "auditors"?

Senator CUMMINS. Mr. Trumbull, really there is so much of this bill that I am not satisfied with that I would not want to particularize. No; if you have in your mind the word "auditors" as a subject of criticism, I entirely agree with you. I think they should be the strongest and best men in the country.

Mr. TRUMBULL. If you would like to know what I actually think should be done, I think it should be an arbitration just as it is in England.

Senator CUMMINS. Yes; but we can not compel arbitration. We can not compel the railroad companies to agree to arbitrate.

Mr. TRUMBULL. But then the road has the Court of Claims.

Senator CUMMINS. All that we can do is to provide a tribunal for hearing the questions and then give either side a right to appeal to the court. That is all we can do, assuming we do not have a voluntary arrangement.

Mr. TRUMBULL. You know that the English law provides for arbitration.

Senator CUMMINS. There are a good many respects in which Parliament has more power than Congress, possibly.

Mr. TRUMBULL. Yes. They made a settlement with the railroads in 48 hours after they took them over, because of their ability to deal with it outside of Parliament.

Senator CUMMINS. But under a law of Parliament.

Mr. TRUMBULL. Yes; under a law. They reached an agreement immediately with the roads and took the best year the English roads have ever had.

Senator CUMMINS. I am not speaking about the standard, but I am speaking about the process that this bill provides for ascertaining just compensation.

Mr. TRUMBULL. Yes; I take it you agree, Senator, that it should not be merely a clerical job.

Senator CUMMINS. Oh, I thoroughly agree with that, and I wondered to just what part of it your criticism or suggestion applied. Whether it was the fact that the Government appointed some tribunal for the ascertainment of the damages, or whether it was to the particular tribunal mentioned in the section.

Mr. TRUMBULL. Well, if the tribunal is an impartial one, I do not see how we could object.

Senator CUMMINS. An impartial one, and composed of men big enough to deal with that kind of question.

Mr. TRUMBULL. Yes. You see, Senator, there are going to be so many complicated questions come up. Right in the first instance this question of special conditions, new property and new road

opened up, and roads not yet developed, and so on. I think a great many roads will make agreements, but there will be those special cases, and then you are going to have continually the question of maintenance.

Senator CUMMINS. You would not have any objection to having this tribunal composed of members of the Interstate Commerce Commission, I take it.

Mr. TRUMBULL. I would not like to say "yes" to that. I think that is a matter for Congress to determine, Senator. You are acting here in the interests of the owners and the citizens of the United States. Nearly all of our securities have come home. The Government is not hiring a railroad from an outsider.

Senator CUMMINS. I recognize the vast importance of it, and it is one thing in this bill that we must provide for. All the rest may be a matter of discretion, but if we take over these railroads, as we have taken them over, we must provide a tribunal for ascertaining the just compensation which is to be paid to them for the use of their property.

Mr. TRUMBULL. Yes.

Senator CUMMINS. And I would like to have your opinion with regard to how that tribunal should be selected and appointed.

Mr. TRUMBULL. Will you allow me to confer with some of my colleagues and report to you later?

Senator CUMMINS. I will be very glad to.

Senator KELLOGG. Are you through, Senator?

Senator CUMMINS. Yes; that was all.

Senator KELLOGG. The section that you are referring to, section 3, which provides for a tribunal, or auditors, rather, of the Interstate Commerce Commission, to assess the value of the use of roads declining to enter into agreements under section 1, is liable to be a very important tribunal, is it not?

Mr. TRUMBULL. Very.

Senator KELLOGG. I notice the Interstate Commerce Commission's finding as to the earnings is conclusive under section 1, is it not?

Mr. TRUMBULL. Yes.

Senator CUMMINS. That is true only for the purpose of the voluntary agreement.

Senator KELLOGG. Yes; that is quite so. Now, should not the tribunal, under section 3, be an impartial, able tribunal of men who are familiar with railroads, and value of use of railroads, securities, and business of the country?

Mr. TRUMBULL. Undoubtedly.

Senator KELLOGG. That is as important a tribunal as we could create, is it not?

Mr. TRUMBULL. I think at this juncture it is; yes, sir. Mr. Kruttschnitt made a very good statement on that—that peace of mind of the security holders is very desirable.

Senator KELLOGG. And justice to the Government that must pay the bill?

Mr. TRUMBULL. Yes.

Senator KELLOGG. And to the people who must pay the bills?

Mr. TRUMBULL. Yes.

Senator KELLOGG. And to the railroads and security owners; an impartial and able tribunal to settle that question.

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Mr. TRUMBULL. Yes.

Senator KELLOGG. And to the railroads and security owners; an impartial and able tribunal to settle that question.

Mr. TRUMBULL. Yes.

Senator KELLOGG. Ultimately, as Senator Cummins says, Congress has no power to fix the use of any of these railroads. What is the object, therefore, for Congress to fix a standard for the use of the railroads, some of which necessarily will not accept it?

Mr. TRUMBULL. It seems to me desirable to get voluntary agreements with as many as possible, and to remove them from the field of debate and litigation.

Senator KELLOGG. Then why not let the President or somebody, some tribunal, make the arrangements with each road, unhampered by any directions, as to what they shall pay? What is your suggestion about that?

Mr. TRUMBULL. I would prefer to leave section 1 as it is because I think that has done a good deal already to restore confidence.

Senator CUMMINS. It undoubtedly has. I do not wish to go on with this examination if you have not completed your statement.

Mr. TRUMBULL. I was about through.

Senator KELLOGG. Then I will ask you a question or two. I think some one of the witnesses stated that if the railroads are going to depend partly on borrowed money and partly on stock for its money to construct and improve railroads that there must be a fair relation between the stock and the bonds if the credit on the road is to be good. What relation has your experience, or does your experience lead you to suggest?

Mr. TRUMBULL. I do not think you can state an exact figure, but it is generally considered that the debt should not be any more than the stock.

Senator KELLOGG. Certainly no more than 60 per cent, you think?

Mr. TRUMBULL. Of the total?

Senator KELLOGG. Yes.

Mr. TRUMBULL. No; it should not be, to be a snug financial situation.

Senator KELLOGG. If, then, it must procure its money in the market on bonds, it must put in about 40 per cent or 50 per cent of the betterments and improvements from earnings or else sell stock?

Mr. TRUMBULL. Selling stock has been off the map for some time now.

Senator KELLOGG. That is what I was going to ask you about.

Mr. TRUMBULL. Yes, sir. The only way that a road situated like that can restore its equilibrium is to devote surplus earnings to the property, unless it can sell stock at less than par.

Senator KELLOGG. That is all I care to ask.

The CHAIRMAN. Are there any further questions?

Senator UNDERWOOD. I would like to ask you this question, Mr. Trumbull. Under the terms of this bill if your road failed to reach an agreement with the Government as to the just compensation for the taking of the road and was compelled to go into the courts, what would be the measure of your damages that you would sue for under this bill?

Mr. TRUMBULL. That is pretty hard to answer, Senator.

Senator UNDERWOOD. Then you think the bill is indefinite as to the terms on which you could sue?

Mr. TRUMBULL. Yes. I have assumed that any damage that we honestly think we have suffered would be brought to the attention of the Court of Claims.

Senator UNDERWOOD. I am conceding that. I concede that you would have a right to go into the Court of Claims and sue for just compensation if you can not get an adjustment. I asked you, though, what you would consider the measure of your damages?

Mr. TRUMBULL. I should think that what you were doing under a fair system of regulation at the time the company was taken over would be a fair measure. Of course, that question is limited by our scheme of regulation.

Senator UNDERWOOD. You would sue, then, for a rental value, or would you sue for the value of your railroad?

Mr. TRUMBULL. I would ask my lawyer in on that. I think I would try first to get the rental, because I would like to get some cash as soon as possible. I really do not know what the lawyer would say.

Senator UNDERWOOD. I was trying to find out what the attitude of the railroads was with reference to the terms of this bill if it went to the courts—as to whether your attitude was that the basis of compensation was fixed on a yearly rental value as just compensation or whether you considered that your just compensation would be the value of the property.

Mr. TRUMBULL. I have not heard it suggested in any quarter that any one would sue for the value of the property itself.

Senator UNDERWOOD. May I ask you this question: If this bill is indeterminate in that it carries within its folds the possibility that the railroad may not be returned to the present owners, would you regard an adequate rental value as just compensation to the owners of the property?

Mr. TRUMBULL. No; I think, Senator, that if the Government is not going to return the railroads they should buy them and give the owners a chance to do something else.

Senator UNDERWOOD. Then, you think if the terms of the bill are such that at some fixed period—at the end of the war or at some other definite period in the near future—the railroads are to be returned to the present owners, that just compensation could be measured in a rental value?

Mr. TRUMBULL. Yes.

Senator UNDERWOOD. But if the time is indefinite, with the possibility of their not being returned at all, then just compensation would be what would be a fair value of the property?

Mr. TRUMBULL. Yes.

Senator UNDERWOOD. That is all I have to ask.

Senator TOWNSEND. Mr. Trumbull, a moment ago you suggested something about the present regulation of railroads as possibly entering into the question of your damages. You regard the present regulation as a legal regulation, of course?

Mr. TRUMBULL. Yes.

Senator TOWNSEND. And you would not expect more than you could reasonably be expected to have earned if you had kept the railroads under present control, would you?

Mr. TRUMBULL. No; provided the regulation is adequate.

Senator TOWNSEND. Provided the regulation is the same as it is now?

Mr. TRUMBULL. Well, I would not think that. I feel more free to answer the question, Senator, than I would have felt a month

or two ago, because the commission has made a special report to Congress in which it reiterates that the railroads have a right to expect and it is their duty to give a return that will pay the expenses, taxes, and a fair return on the value of the property, but they did not grant that.

Senator UNDERWOOD. So you would expect, in case suit was brought to recover compensation, that the plaintiff might argue that it would have received, or was entitled to receive, better consideration at the hands of the Interstate Commerce Commission than it was receiving at the time it was taken over?

Mr. TRUMBULL. Yes; I certainly would argue, if I were arguing the case, that we were entitled to an increase in rates to make up for this enormous increase in expenses, and they themselves have said practically that we are entitled to it, but instead of going ahead and deciding the rate case, they passed it up to you.

Senator UNDERWOOD. That would rather complicate the question of determining damages, would it not?

Mr. TRUMBULL. It would. I am not a lawyer, as I say, but it seems to me that if I were arguing that case before any group of men I would say that if the Government expects my company to continue to perform a public service, my company is worthy of its hire just as much as anybody else is worthy of his hire, and this hire that I am getting is not sufficient to attract more capital.

Senator UNDERWOOD. You would not expect to bring suit against the Government or get permission to bring suit against the Government for such damages in case the railroads had not been taken over by the Government, would you?

Mr. TRUMBULL. No; we would be relegated there, I suppose, to the matter of confiscation, but still, as I understand the rulings of the commission, they feel that it is a part of their duty to sustain the credit of these roads, and I do not think that can ever be reduced to the exact line of confiscation. Nobody puts any money into any property on that basis.

Senator UNDERWOOD. That is all. I just wanted to know what you meant by that suggestion. You have explained yourself.

Senator CUMMINS. Mr. Trumbull, you say that it is your view that if the Government had taken the property, taken the ownership of the property, that a railroad company would have the right to urge before the tribunal that was ascertaining the value of the property that under the present rates the net earnings were not enough, and that therefore the value of the property should be ascertained by what the net earnings should be instead of what they actually have been.

Mr. TRUMBULL. Yes.

Senator CUMMINS. The converse of that proposition is therefore true, I assume, that the Government would have the right to urge that the net earnings with respect to any particular railway were too great, or had been too great, and they should be reduced therefore in order to ascertain what the true value of the property is.

Mr. TRUMBULL. Of course that may be theoretically correct, but practically it would not work, because it would mean a reduction of rates on one road and not a reduction on another.

Senator CUMMINS. Of course this rule has to be applied to individual properties, not to the railroads as a whole, for each case would

stand upon its own merits. Now, I agree with you entirely if I understand you right, that when we come to ascertain the value of this property, whenever we do it, that the question will be open as to what the net earnings of that particular property should be rather than what they have been, and you agree with me in that.

Mr. TRUMBULL. Yes, and I think it is further complicated by multifarious State regulation.

Senator CUMMINS. All that means, to assert what I have long thought was the true doctrine, is that the net earnings, or the net income of any particular railroad property, is not a criterion of its value.

Mr. TRUMBULL. It has its limitation, of course, like any other measure of value, and particularly has its limitations when a property is conducted as a public servant. If the Government sees fit not to turn back these railroads, it seems to me they ought to propose their purchase on a fair basis, or some alternative scheme, a profit-sharing arrangement, or something of that kind, which will retain the benefit of private initiative. I think there is a great opportunity in the next year or two years for some constructive statesman to work out the biggest solution yet thought of in connection with this railroad system as a whole, that would take care of the weak roads as well as the strong.

Senator CUMMINS. I was directing your attention to the situation as it is, and the possibility of the Government having to determine, when it is attempting to fix the compensation for the yearly use of the property, or fix the compensation if it takes over the property absolutely, the field that is open to both sides, and we agree that it would be competent for the railroads to insist that the net earnings, or the earnings of any particular property had not been what they should have been; in other words, that the rates have been too low; and on the other hand it would be open to the public to say as to any particular property that the rates had been too high, and that the earnings had been, therefore, too high.

Mr. TRUMBULL. Of course, if you pursue that you will bankrupt some railroads; if you cut down the rates on the stronger roads you will bankrupt some of the weaker roads, because they must manifestly make the same rates. The Government has adopted the policy for 30 years, not only of Federal regulation, but of State regulation, and since 1890 there have been antitrust laws and various State antitrust laws besides. Now, that has compelled competition. It has prevented the things being done that have just been done with the stroke of a pen, and in maintaining these separate entities necessarily some of them get better net income than others.

Senator CUMMINS. As we have frequently remarked around these tables, it presents the insolvable problem of railroad regulation. It would not be so difficult if it was Government ownership.

Mr. TRUMBULL. The commission has treated these railroads regionally, putting all of the roads of a region together, and tried to base something fair on that. There can, in my personal opinion, be no entirely satisfactory solution of the question you raise and the problem of the weak roads except by compulsory merger of their profits.

Mr. THOM. May I ask a question, Mr. Chairman?

The CHAIRMAN. Yes.

Mr. THOM. Mr. Trumbull, I wanted to see whether you understood Senator Cummins. Senator Cummins's proposition is: Although the Government has now regulated these rates during the period of regulation, that in the process of taking over the roads it is legitimate for the Government to say "Now we have allowed you too much rates and we can readjust your earnings so as to allow you less in the process of taking over than we have allowed you in rates by the constituted governmental tribunal," and you said you agreed to that. Did you understand it in that way?

Mr. TRUMBULL. Yes; I think the converse goes with the other, Mr. Thom.

Mr. THOM. I do not agree with either proposition.

Senator CUMMINS. I know you would not.

Mr. TRUMBULL. Supposing our earnings were inadequate in 1918, would we not be entitled to raise that question?

Mr. THOM. Not on increased rates, no. You have a right to raise the question as to whether under existing legal conditions your receipts reflected the earning—the normal earning capacity of that road, but not make it a rate case.

Senator POINDEXTER. When there is a difference of opinion among leading railroad men, the Government may have a chance, you know.

Senator McLEAN. It shows there is no collusion.

Mr. TRUMBULL. I regarded it as almost a moot question because the railroad earnings have not been adequate. Everybody admits that, I think. As I have tried to show here we have got to an impasse. We can not raise any fresh capital for these railroads. Now if you can not raise fresh capital to serve the public, manifestly something is inadequate.

The CHAIRMAN. Are there any further questions?

Senator POINDEXTER. Have you any detailed plans, Mr. Trumbull, under which a compulsory merger under private ownership could be worked out?

Mr. TRUMBULL. No.

Senator POINDEXTER. Do you think that compulsory merger is compatible with private ownership and control?

Mr. TRUMBULL. That a compulsory merger is?

Senator POINDEXTER. You said a while ago that compulsory merger was the only way that proper coordination could be effected. Now, do you regard that plan as compatible with private ownership or control. I can readily understand a compulsory merger under Government control.

Mr. TRUMBULL. Entirely so, I think, but it should always be under regulation.

Mr. THOM. Section 13, Mr. Trumbull.

Mr. TRUMBULL. I just want to raise a question about section 13, of the bill for you to consider, as to whether you want to perpetuate a period of uncertainty. It seems to me to be the crux of that question. I do not know how the railroads will fare under it, whether they will fare better by continuing this arrangement or by having it cut off. It seems to me from my standpoint as a layman that it leaves the railroad problem in the air indefinitely.

The CHAIRMAN. You have reference to the last section of the bill?

Mr. TRUMBULL. Yes, sir. I think that is the only comment I wish

to make. I wished to raise that question. I am sure you want to do whatever is best for the financial credit.

Senator POMERENE. What is your suggestion? Is it your suggestion to limit it to a given length of time after peace is declared?

Mr. TRUMBULL. Yes, I think that that ought to be considered.

Senator TOWNSEND. Are you in favor of the Government taking over the railroads now? Are you in favor of the Government taking ownership of the railroads now?

Mr. TRUMBULL. No.

Senator TOWNSEND. Why not?

Mr. TRUMBULL. Because I think we should preserve the benefit to the people of the United States of private initiative, either by leaving them in the hands of private owners under some system of guaranties such as they have in France, or under some profit-sharing arrangement. I think this particular step was inevitable.

Senator TOWNSEND. Do you think the Government could handle the railroads as owners as well as the private individuals can?

Mr. TRUMBULL. Yes, I think they could.

Senator TOWNSEND. Do you think they would?

Mr. TRUMBULL. I think that Mr. Acworth's testimony here last winter is a better answer than any I could make, probably. It is not the history of Government owned railroads anywhere in the world that they are as well managed.

The CHAIRMAN. Mr. Trumbull, you have used an expression there that I would like you to explain. You said that you considered this particular step as inevitable. You had reference to the Government assuming control?

Mr. TRUMBULL. Yes.

The CHAIRMAN. For what reason?

Mr. TRUMBULL. My own theory about the railroad situation in the United States, Senator Smith, is that since 1910 some form of guaranty was inevitable; it had to come sooner or later, because in 1910 the law was passed by which any increase in rates by the carriers could be suspended by the commission. The scepter passed out of the hands of the railway executives at that moment. They no longer had the power to do what every other business man can do, that is, make provision for the future.

The CHAIRMAN. So that your opinion is that this step was inevitable, whether it was a crisis of the war or otherwise?

Mr. TRUMBULL. Yes, sir; we had reached an impasse here because the investors, rightly or wrongly, felt that they would not be compensated for increasing expenses. Regulation is proper, I mean the theory of regulation is quite proper, but when it takes charge of the revenue of a company, it should logically accompany that with some guaranty. So, as I look at the evolution of the railroads of the United States since 1910, it seems to me this step was inevitable, and only precipitated by a war condition and came sooner on that account, and precipitated by a report of the commission to you asking you to tell them what to do.

Senator LA FOLLETTE. It is your opinion then that regulation under existing law has broken down and failed?

Mr. TRUMBULL. The system of regulation we have has I think failed, particularly because of the multifarious regulations of the

States, as well as of the Federal Government, but if it could be supplemented with guarantees, it might be a success.

Senator CUMMINS. Reduced to its last expression that means, from your standpoint, that the railroads must either have higher rates or the Government must step in and take the roads?

Mr. TRUMBULL. Yes, or have some scheme like the French system in which there is a guaranty.

Senator CUMMINS. If that guaranty were fulfilled by the Government, it would either have to put up the rates or take it out of the Treasury.

Mr. TRUMBULL. I should assume that whoever is directing the railroads, either under this arrangement or any other, would want them to pay their way, and that the rates would be adequate. But you can see the state of mind of the investor in the year 1917 when only \$15,000,000 of new capital stock was listed on the New York Stock Exchange. I mean, for new undertakings.

Mr. THOM. You are expressing your personal views and not the views of the railroads in that?

Mr. TRUMBULL. Yes, I should make that qualification. I am not speaking for the railroads in that matter. I am not speaking for the railroads on this one question.

The CHAIRMAN. You are speaking as a student of the railroad problem.

Mr. TRUMBULL. Yes.

Senator LA FOLLETTE. What is your official position?

Mr. TRUMBULL. I am chairman of the railway executives advisory committee which represents about 90 per cent of the railroads in Class I.

Senator LA FOLLETTE. Ninety per cent of the traffic or 90 per cent of the mileage?

Mr. TRUMBULL. 90 per cent of the earnings.

Senator LA FOLLETTE. What proportion of the mileage?

Mr. TRUMBULL. It would be a little less than 90 per cent.

Senator POINDEXTER. Are you connected with any railroad company?

Mr. TRUMBULL. Yes, the Chesapeake & Ohio and the Hocking Valley, and I am the chairman of the board of the Missouri, Kansas & Texas, which I am sorry to say is in receivership.

Senator POINDEXTER. What position do you hold in the Chesapeake & Ohio?

Mr. TRUMBULL. Chairman of the board.

Senator POINDEXTER. And also in the Hocking Valley Railroad?

Mr. TRUMBULL. Yes, chairman of the board.

Senator LA FOLLETTE. Do you have the membership of that committee there?

Mr. TRUMBULL. Yes.

Senator LA FOLLETTE. Will you just put it in?

Mr. TRUMBULL. Yes. R. H. Aishton, of the Northwestern; B. F. Bush, of the Missouri Pacific; A. J. Earling, chairman of the St. Paul railroad; Howard Elliott, of the Missouri Pacific and New Haven railroads; W. J. Harahan, of the Seaboard Air Line; Walker D. Hines, chairman of the Atchison Co.; Hale Holden, president of the Burlington; Julius Kruttschnitt, of the Southern Pacific; L. F. Loree, of the Delaware & Hudson, and chairman of the board of the

Kansas City Southern; R. S. Lovett, chairman Union Pacific system; C. H. Markham, president, Illinois Central; Samuel Rea, president, Pennsylvania; W. L. Ross, of the Clover Leaf road; A. H. Smith, president of the New York Central; F. D. Underwood, president of the Erie; H. Walters, chairman Atlantic Coast Line and Louisville & Nashville; Daniel Willard, president of the Baltimore & Ohio, and myself.

The CHAIRMAN. Are there any other questions?

Senator POINDEXTER. How would you reconcile the authority of the States as now exercised in regard to railroads through their public service commissions, or otherwise, with a federal guaranty of dividends on the stock?

Mr. TRUMBULL. I think the right reconciliation of that would be the one that our committee has been advocating for three or four years, that is, to have regional commissions so as to keep in close touch with the people that are affected, and they would probably iron out most of the cases.

Senator LA FOLLETTE. You mean regional Federal commissioners?

Mr. TRUMBULL. Yes; regional Federal commissioners. They would probably iron out most questions because they are nearer to the people and many differences never would get to Washington at all.

The CHAIRMAN. Any further questions? If not, Mr. Trumbull, and you have no further statement, you may be excused.

Mr. TRUMBULL. No, I should just like to say that I have had no time to think of Senator Cummins' question about damages, and Mr. Thom's answer is my answer. I would like to adopt it because he is so much wiser on this question of suits than I am.

Senator CUMMINS. Mr. Chairman, I think Mr. Thom will have to make his own answer. I do not agree with you in that particular respect that he is wiser than you. I shall want your statement to stand as corroboration for my own view.

Mr. TRUMBULL. Do you want, Mr. Thom, that I should say anything about this question of market prices? I did answer a question here.

Mr. THOM. I wanted you to say something before you got to that with reference to the effect of an indefinite tenure on the part of the Government on railroad credit, and then I would like to have you speak on that question of market values as a basis.

Mr. TRUMBULL. I have already mentioned here that to leave an indefinite tenure would perpetuate an uncertain condition, and of course, that would affect all railway securities and affect the ability of the railroads to perform their public functions. There are so many reasons about the stock market feature, so many things to be said against it, that I hardly know where to commence.

The CHAIRMAN. Under the terms of this bill, Mr. Trumbull, you are allowed to invest your surplus, or whatever capital you may have, or see fit, in the betterment of roads. What effect would an indeterminate tenure in this bill have upon your disposition to make a further investment in the roads during the period of the Government's control?

Mr. TRUMBULL. It would have a rather blighting effect. There may be cases like this but I have never known of any. For instance, if I want to rent a building from you or a residence at so much per annum, and say I will turn it back to you when I get through with

it, when I please, I fancy we would not trade. That probably would not be agreeable to you. I should think that with this indefinite condition you would have a situation very much as they had in Italy, that companies would be very reluctant to spend their surplus in improvements.

The CHAIRMAN. I believe that the compensation suggested here carries with it a surplus, and therefore there would be possibly an opportunity on the part of the railroads to invest this surplus in the improvement of their property where needed, and I wanted to know what effect that last section would have on the officers of the roads, those having them in charge, in adding to any improvement if they had no guarantee that they might be the beneficiaries themselves, as a corporate company, of the improvements they put in.

Mr. TRUMBULL. I think the first impulse, Senator, under war conditions will be for every company to do its best to take care of the business, and they would not raise any hair-splitting questions.

The CHAIRMAN. I was not asking it from a patriotic standpoint. It was just a business proposition that I was putting forth.

Mr. TRUMBULL. They would have to give much more deliberate consideration to every improvement they make, for they do not know what their status is to be later. It is uncertainty that is bothering investors now, and this raises the question whether you think from a public standpoint it is wise to leave the investors uncertain about the tenure when the property will come back, or what shape it will come back in, and all that sort of thing.

Senator ROBINSON. You have said, if I understood you correctly, that Government control and guaranty of earnings were inevitable, and that it was necessary to stabilize the credits of the railroads and to strengthen them. Will you explain why the abandonment of Government control and guaranty would have that effect, if given time? If it is necessary now to assert Government control and to give Government guaranty, how is it that the credit of the railroads would be benefited by withdrawing at a specified time?

Mr. TRUMBULL. It would not.

Senator ROBINSON. Your idea is that the guaranty should be continued but the Government control abandoned. Is that it?

Mr. TRUMBULL. My idea is that before the period of governmental control expires we should all be able to work out some better scheme of control and regulation of the railroads of this country. I think that you will have time to do it, to look into it deliberately, and I am assuming that Congress would not shirk its duty in determining how it is to go on having these companies serve the public.

I have not said much about that, first, because I am only speaking as an individual in it, and second because the immediate thing before us is to do everything we can, as Mr. Kruttschnitt said yesterday, as good soldiers, to help keep things moving; but, I assume that later on, through the joint congressional committee or otherwise, you will want to consider some permanent relation between the Government and the railroads of some kind.

Senator ROBINSON. You were asked about the tribunal to consider in the first instance the question of compensation. I understand that you do not care to commit yourself to a plan until you have had an opportunity of consulting with some of your associates.

Mr. TRUMBULL. No; I think I should not.

Senator ROBINSON. I can readily understand why you would feel that way. Would it be inconsistent with anything that you now know, or would care to say about it, to have represented on the commission that should determine this question at least one representative of the judiciary department?

Mr. TRUMBULL. Would you allow me to confer with my colleagues about that?

Senator ROBINSON. Certainly.

Mr. TRUMBULL. Because it is a pretty important question. I do not know what they will think is the wisest way. Of course they will consider the Government's side as well as the owners' side, and as Senator Cummins said it must be just to the Government, whatever is done.

Senator ROBINSON. Of course the object of any commission that should be created, the purpose of it as well as the purpose of Congress undertaking to fix a standard by which an agreement might be reached, is to avoid litigation.

Mr. TRUMBULL. Yes.

Senator ROBINSON. To save the embarrassments, delays and impediments to good service that might result from extensive litigation.

Mr. TRUMBULL. Yes.

Senator ROBINSON. But lastly, the carriers have, and it can not be taken away from them, the right to resort to the courts for the determination of that question.

Mr. TRUMBULL. Yes.

Senator ROBINSON. No matter what is put in this bill concerning a method of providing for settlement of it, no one contemplates an effort to take away from the carriers that legal right.

Mr. TRUMBULL. Yes, but I should hope that it will be so conducted that there will be very little resort to the courts, which is a wearying process and it does not make for friendliness.

Senator ROBINSON. Nor for good service either.

Mr. TRUMBULL. No.

Senator ROBINSON. Especially when conditions require cooperation on the part of every one interested.

Mr. TRUMBULL. I should hope that we will do everything we can to form a friendly atmosphere on this whole subject and avoid anything that will retard that, because these questions are too large to be dealt with in a small way.

Senator ROBINSON. You have not found any one plan of settling the compensation that would apply to all the railroads, have you?

Mr. TRUMBULL. No.

Senator ROBINSON. Nor do you think it is possible to do so?

Mr. TRUMBULL. I am sure you will get a larger voluntary assent to a later year than you would to the three-year average.

Senator ROBINSON. Still that would not apply to the case of a road that had no net operating income in 1917, if there were such roads?

Mr. TRUMBULL. No; the tribunal ought to deal with that in a broad way.

Senator ROBINSON. Have you thought what guarantees should be made for a road, or whether any, for a road that had no net operating income in the immediate past—in the recent past?

Mr. TRUMBULL. I do not think you could have any fixed, infallible basis for all roads. Take the road the Chesapeake & Ohio built

across the Ohio River. It is only 31 miles. It includes a bridge across the Ohio, an up-to-date bridge that we hope will last forever. The extension cost us about \$5,000,000, and it is a very important link in the chain.

Senator ROBINSON. You can not abandon it?

Mr. TRUMBULL. Oh, no; we just built it.

Senator ROBINSON. I know, but any scheme that is adopted must contemplate the operation of that line. Is it profitable?

Mr. TRUMBULL. It is not profitable yet; we just put it into operation. Now, you will need some pretty good talent to determine what we ought to have for the use of that property.

Senator ROBINSON. Will it be necessary to the future railroad operations of the United States to use lines that may not themselves be profitable?

Mr. TRUMBULL. I think as the years go on a great many of them can be used jointly. Some of them ought to be abandoned, some of them may be used as second track, or for diversion of traffic.

Senator ROBINSON. Of course this plan could not apply to any railroad of that class.

Mr. TRUMBULL. No; under this plan all the earnings will be in one pot.

Senator TOWNSEND. All the earnings of all the railroads, you mean, will be in one pot?

Mr. TRUMBULL. Yes; over and above the guarantees.

Senator TOWNSEND. You mean no separate account will be kept of the roads?

Mr. TRUMBULL. Yes; we expect to keep the separate accounting, but I mean to say in answer to the Senator's question, a road which has been used very little might be used a good deal, and show, so far as its books are concerned, very large earnings, but under the guarantee it would not get them.

Senator ROBINSON. The system in contemplation under Federal control might make a road that has been used heretofore a great deal, used very much less?

Mr. TRUMBULL. Yes.

Senator ROBINSON. That is one of the purposes, to divert traffic.

Mr. TRUMBULL. Yes.

Senator ROBINSON. The converse might be true when diverting traffic to lines that have been little used.

Mr. TRUMBULL. Yes.

Senator KELLOGG. There are a great many places in the country where there are parallel lines of unimportant roads; that is, they are important, of course, to the local communities, but one single track line would do the business; but under the laws of the States they can not be abandoned without the consent of the State authorities. As a matter of economy, one of those roads should be abandoned and the line used jointly by both roads.

Mr. TRUMBULL. Yes.

Senator KELLOGG. There are a great many such places throughout the country, are there not?

Mr. TRUMBULL. Undoubtedly.

Senator KELLOGG. Is it your idea that that ought to be worked out under some plan of regulation?

Mr. TRUMBULL. No, not at present. I think in the ultimate solution that question should be dealt with.

Senator POMERENE. I wanted to ask you a question, Mr. Trumbull. A little while ago, in discussing this plan for the strengthening of the credits of roads, and taking their securities, and so forth, you expressed the view that the Government ought to deal very liberally with these roads, and so forth. A moment ago, in answer to a question by Senator Robinson, you said that there were some of these roads that were not profitable and perhaps ought to be abandoned. Now, with that situation before the President, what do mean by applying your rule of liberality in strengthening the credit of the roads and giving them financial aid? Would you deal liberally with them, as you had that thought in mind with these roads that ought to be abandoned, and finance them when good business prudence would suggest to you as a railroad man that credit ought not to be extended to them?

Mr. TRUMBULL. I should think that roads that ought to be abandoned should be in a class by themselves. I had telegrams from two or three of those where they have a deficit, and they naturally want to know what their status is to be.

Now, you might say, looking at it from the public standpoint, that here is a road of two or three hundred miles or more which is serving thousands of American citizens. The owners have their investment in there, but they have no net earnings. Now, during this period at least, you might see that they get a certain return on the investment quite apart from the standard. It will be for you to determine whether you want them to serve the public or not.

Senator POMERENE. In other words, you would primarily take into consideration what would be for the good of the public rather than for the good of the security holders of that particular railroad?

Mr. TRUMBULL. The public interest is paramount. This tribunal would have to determine whether they want those people served, and it seems to me hardly conceivable that the Federal Government would want them served at a loss to the owners.

The CHAIRMAN. Are there any further questions?

Senator POINDEXTER. Mr. Trumbull, taking the capacity of the railroads as they now stand, the rate of increase of traffic, what is your opinion as to the probable ability of the roads under the most efficient management to handle the increasing traffic of the country, supposing it increases normally, even aside from the exigencies of the war?

Mr. TRUMBULL. I would very much rather a man like Mr. Kruttschnitt should answer that question because I am not an operating man. I only know that several hundred million dollars of new money goes into these roads every year. Sometimes more and sometimes less, either out of surplus or out of new borrowed money, and we have 110,000,000 people and soon we will have 125,000,000 people, and we would expect that history will repeat itself, and that there should be more facilities for more people.

Senator POINDEXTER. Under Governmental operation there would be no motive for suppressing water competition, would there, such as there is in private ownership and operation?

Mr. TRUMBULL. There would be no motive under Government ownership. They could do what they pleased. I am not aware of any attempt of the railroads in private management to suppress it.

Senator POINDEXTER. I do not know that there is any such general practice, but there have been instances of the kind, and one can readily see that in the natural operation of a desire of every one to promote his own interests, that he would not develop a competing system.

Mr. TRUMBULL. Congress has taken hold of the water question pretty well in the Panama Canal act. The Panama Canal is quarantined against all railroad-owned boats, and there is also provision in it that railroad companies must part with all their steamship lines unless they can make a good case before the commission that it is desirable to retain them.

Senator POINDEXTER. Yes. There was considerable difficulty in getting that legislation passed, and then after it was passed, a campaign was started for imposing tolls on domestic shipping going through the Canal.

Mr. TRUMBULL. Yes, on coastwise boats.

Senator POINDEXTER. Yes.

Mr. TRUMBULL. I never could see why they should not pay tolls. If you will give me a monopoly of any business I will not ask you for a rebate.

Senator POINDEXTER. There could not possibly be a monopoly of transcontinental freight traffic by this canal, could there be? They are bound to compete with the railroads?

Mr. TRUMBULL. But the coastwise boats were using that canal and had a monopoly of it against all foreign boats, and against all railroad-owned boats.

Senator POINDEXTER. There is no great difficulty if that law was in force in competing with other ships which were excluded from the canal, but that is a very different question from competing with several transcontinental railroads.

Mr. TRUMBULL. The transcontinental lines are all under regulation. We cannot put up the rates there without the concurrence of the commission.

Senator POINDEXTER. You just stated that this regulation has broken down.

Mr. TRUMBULL. I say as a whole it seems to me that is not too strong a term. I do not use it in any offensive way, of course.

Senator POINDEXTER. Oh, no.

Mr. TRUMBULL. But when the commission sends a special report to Congress, that it is their duty to do so and so, but even if they do it, you can not get any fresh capital for these railroads, then it seems to me something has broken down.

Senator POINDEXTER. I agree with you. That is all.

Senator LA FOLLETTE. Mr. Trumbull, how long have you been connected with the railroads engaged in interstate transportation in an executive capacity?

Mr. TRUMBULL. Twenty-four years.

The CHAIRMAN. If there are no further questions to be asked, Mr. Trumbull will be excused.

Mr. TRUMBULL. May I say one more thing about these property investment accounts? I have tried to show you that as a whole our property investment accounts are not more than the value of the property.

I see here by report of the commission for 1915 that besides the property investment accounts, the railroads of the country had working capital consisting of cash and material, and other items of about \$1,000,000,000. Those figures are not included in the property account which is used as a divisor in giving you the rate of return.

Senator KELLOGG. That is a permanent investment, is it not, practically?

Mr. TRUMBULL. Yes. It is fair to say that it is partly offset by current liabilities, but nevertheless there must be all the time on the railroads of the United States as a whole, say \$500,000,000 of working capital.

Senator KELLOGG. It is offset by current liabilities.

Mr. TRUMBULL. Partly.

Senator KELLOGG. Which are not included in your unfunded debt on which you pay interest?

Mr. TRUMBULL. Yes.

Senator KELLOGG. It is not included in that?

Mr. TRUMBULL. Not included in that. The difference here for this particular year, which was two years and a half ago, was about \$400,000,000 more current assets than current liabilities, and I should say it must be considerably more than that now both in cash and in material and supplies.

Senator KELLOGG. Would you say that \$400,000,000 was a fair working capital over and above current liabilities as a permanent investment of all roads in the country?

Mr. TRUMBULL. Yes, considering the roads operated separately.

Senator KELLOGG. That is all.

The CHAIRMAN. Mr. Thom, you are next.

Mr. THOM. Mr. Chairman, the House Committee is going on in the consideration of this bill at the same time this committee is going on, and I have exhausted my apologies to the House committee, and they say I must be there to-morrow morning. I hope, therefore, that you will excuse me to-morrow. We may have one or two other witnesses. I have telegraphed for Mr. Erickson, who has made some special study of some of the economic questions involved and one of the Senators expressed a desire to hear his testimony. I have not heard from him. There may be one or two other executives who would like to be here. I would be very glad if the committee would find it convenient to go on with some other aspect of this investigation and let us come in early next week.

I would like also to have an opportunity of making an argument before the committee on the general questions involved and also on the law points involved, and Mr. Patterson would like to have an opportunity of making an argument on the situation of these eastern roads.

We have a meeting in New York on Sunday of a number of executives, at which time it is necessary for me to attend, and if I leave

there Sunday afternoon there is no telling whether I will get back here Monday morning or not, so I will be glad if my part in the argument could be postponed until Tuesday.

Senator CUMMINS. Does that apply to your further testimony also?

Mr. THOM. I should think I would get back in time, perhaps, to appear before the committee with respect to the testimony on Monday.

Senator CUMMINS. You have no witness to-day?

Mr. THOM. I have no further witness to-day.

Senator ROBINSON. Will you have one to-morrow, or do you know?

Mr. THOM. I have to be away to-morrow, as I told you.

(Thereupon, at 4.30 o'clock p. m. the committee adjourned until January 11, 1918, at 10 o'clock a. m.)

GOVERNMENT CONTROL AND OPERATION OF RAILROADS.

FRIDAY, JANUARY 11, 1918.

UNITED STATES SENATE,
SENATE COMMITTEE ON INTERSTATE COMMERCE,
Washington, D. C.

The committee met pursuant to adjournment at 10 o'clock a. m., Senator Ellison D. Smith (chairman) presiding.

STATEMENT OF HON. GEORGE W. ANDERSON, MEMBER OF THE INTERSTATE COMMERCE COMMISSION.

The CHAIRMAN. The committee will come to order.

Mr. Anderson, will you just give the stenographer your name and address and your official connection here?

Commissioner ANDERSON. My full name is George W. Anderson. I am a member of the Interstate Commerce Commission. So far as I have any address in overcrowded Washington now, it is the Cosmos Club. My residence is Massachusetts.

The CHAIRMAN. Mr. Anderson, we have had before us certain representatives of the railroads in reference to the bill now pending, and the committee would be glad if you would take up the bill. Of course, you may have an order in which you would care to proceed, but the first section of the bill is the part which has been most under discussion.

Commissioner ANDERSON. Mr. Chairman, at the outset I should like to make it clear that I am here in my individual capacity and as a single member of the Interstate Commerce Commission, and what I say is not to be taken as binding upon my associates and the tribunal.

The legislation has not been taken up by the Interstate Commerce Commission, as a commission, and passed on. Whatever errors I commit, therefore, are not the errors of my tribunal. So far as I may be able to be of any assistance to the committee, it will grow out of the fact that perhaps I have worked on it a little longer than you have, and have thought out some things in more detail. I have no set speech and have no desire to appear to know a great deal, as I know I do not know a great deal.

I shall be very glad to take up the bill section by section and indicate the way we worked in the formulation of this bill, and shall be glad to be interrupted at any moment when a question can probably help illuminate any particular point.

The CHAIRMAN. Have you a prepared statement?

Commissioner ANDERSON. I have not.

The CHAIRMAN. Does this section to which I referred involve practically the whole matter that is before us? If it would not interfere with the process you have in mind, I should like to have you explain to the committee why it was that the Government saw fit to take control.

Commissioner ANDERSON. Mr. Chairman, I should suppose that I would speak with meager authority on that point. The ultimate decision, of course, was with the President. But I may perhaps fairly state some considerations which were present in my mind, and which I brought directly and indirectly to the attention of others who had a larger official responsibility than I.

Possibly some of the Senators may recall that over a year ago when I was United States district attorney at Boston, and long before we anticipated being in war, prices were going skyward; and that I was asked by the Attorney General to assist in coordinating investigations into the high prices being made in the Department of Justice by the various United States attorneys under the wholly inadequate Sherman Act. In 1916, I became aware that our transportation facilities, particularly with reference to coal, were proving, as then used, utterly inadequate; and caused attention to be directed in the Department of Justice—I am not sure whether I brought it to the President's attention or not to that point. But things went from bad to worse. I went on the Interstate Commerce Commission on the 15th of October, 1917. Two or three days later, the representatives of the railroads applied for what was called a reopening of the Fifteen Per Cent case. It was ruled that the case was still open, and it was set down for speedy hearing.

In discussion, particularly by Mr. Vanderlip and one or two others who were called by the Commission's own motion, there was brought out (what previously had been running through my mind) and that was that rate increases bore no sensible relation to the pending and prospective needs of the country. It was, in substance, stated I think by Mr. Rea, here present, that if the railroads had good credit (it being claimed that they did not have good credit) that they ought not to offer their securities on the investment market in competition with the offerings of Government bonds. It was admitted, in effect, that if they had not only good credit but money in their treasury, they could not get engines and cars for the suggested needed added facilities without priority orders which would encroach at once upon the domain of war preparations for our allies. It was admitted further if they had both money and priority orders, they could not get engines and cars and steel, etc., for the purpose of equipping roads to do the work which ought to be done in the next six months and perhaps a year, under the war conditions. It, therefore, appeared rather clearly that the raising of rates to give more revenue and to give more credit, bore little or no relation to the war needs of the country for additional transportation service.

That directed attention to the distinction between transportation facilities and transportation service. I made such inquiries as I was able, and I received intelligent information, and, as I thought, sound information, to the effect that the transportation facilities of the country, if coordinated and unified, were probably nearly if not quite adequate to render the transportation service now needed; at least, to render much larger transportation services than were being ren-

dered so long as the transportation companies were under separate private ownerships, and in charge of executives bound by law and their fiduciary relationships to serve the interests of the separate groups of security holders. It seems to me that the so-called War Board erred in their declaration of April that they were going to administer the railroads as "continental systems"; that the law prohibited them from administering the railroad systems as a "continental system." Their declaration indicated that they undertook an impossible task and an unlawful undertaking.

Senator GORE. You mean not impossible in the nature of things but impossible from the fact that—

Commissioner ANDERSON. Impossible if they represented, as they did, separate groups of security holders, bound to seek business and profits for those separate groups of security holders. They could not ignore their lawful and natural obligations to their security holders, to use the facilities of the railroads for the war needs of the country. It was a legally impossible situation, as I viewed it.

I drew various memoranda indicating those views. These, perhaps, had some effect in solidifying and formulating a sentiment to the effect that we must do—at the end of six or eight months—what England did within a week, I think, of the time of her declaration of war, viz., say that the railroads of the Nation must be run by the Nation when we are at war—whatever may be the sound policy in times of peace—as to the actual or assumed value of individual, competitive management.

Lest I be misunderstood, I want to say that I am a firm believer in the Sherman Act, and in competition, as applied to industrial undertakings.

The CHAIRMAN. May I ask right there, because I want to get the point clear that Senator Gore suggested—it is your opinion, even if we had suspended the laws that restrict the roads in their operation and give them what might be termed in common parlance a free hand, the duty of the different officials representing these groups, representing, as you said a moment ago, the security holders, that that, in itself, would have made a perfect mobilization and interchange that was necessary in order to bring about the results we must have, an impossibility?

Commissioner ANDERSON. Within a short length of time; yes. But I had another consideration in mind, and those of us who considered this question then had it in mind. Congress had, in August, 1916, in anticipation of war stress, granted power to the Executive. It was true that Congress was shortly coming in; but it seemed also true that as Congress had already granted a very large power in anticipation of possible war needs, that it was not consistent for those of us having more directly to do with the transportation interests and for the Executive to wait for Congress to do something more, if there was a demonstrated need of immediate action under the power which seemed already granted in ample measure. It seemed, therefore, that the responsibility had already been vested to that extent by Congress in the Executive. After most careful consideration of the construction which must of necessity be put upon the comparatively short act of August, 1916, I came to the conclusion that there was no escape from the Executive's taking the full responsibility of weather conditions, under separate corporation con-

trol, with such unification as had been undertaken by the War Board (which they had in good faith, and with some results, carried out) or leaving the country to suffer such disasters as might accrue from the utter inadequacy of the transportation service.

Those were the views, not as formulated by the President—because I do not know how the President would have formulated them—but you asked me the reasons which led to the proclamation. I have now stated the way it lay in my mind and the way the discussions were formulated between myself and others with whom I had to do, and perhaps the substance of various memoranda which I prepared and which were considered by others. But what I have said, after all, is an individual and, in no other sense, an official view. It comes, to sum it all up, to this: The conclusion was that Congress had already enacted law in contemplation of the emergency which had arisen, and that it was, therefore, the plain duty of the Executive and of those of us who had directly to do with the transportation interests in their national aspect, to use the power already granted, to make the best use of it we could; and then to come to Congress for such supplementation of power or modification of power as Congress should think wise under the then circumstances. That is the gist of the early situation, Mr. Chairman.

Shall I pass now to the consideration of the bill?

The CHAIRMAN. If you please.

Commissioner ANDERSON. Needless to say, in considering what legislation would properly supplement the Federal control assumed under the act of 1916, very many measures were contemplated which we had to reject as being utterly unworkable. There was serious discussion as to whether the act of August, 1916, which authorized the President to take possession and control and to utilize all or any part of the systems of transportation, did not in and of itself import power to agree with the owners of the properties thus taken over for national control, as to the just measure of compensation.

The Reeside case, in the Court of Claims, lends a very considerable support to that view. If the emergency had come during a long vacation of Congress and if the public interest had plainly demanded that there should be an immediate agreement, there would have been good ground for the President's undertaking to agree—under the granted power—to make a just and reasonable payment to the owners, whose property was thus taken for public use, as being necessarily involved in the grant of power to take possession and control and utilize that property.

That Reeside case was a case which arose out of Gen. Fremont's action in the southwestern district in the Civil War. He wanted a lot of horses and sent out an agent to buy the horses, agreeing to pay him a commission for purchasing them at a price, I think, not to exceed \$130 each. The horses were purchased, and later a case arose in the Court of Claims on the theory that the price was too much. As I recall it, the Secretary of War appointed a commission, or some official body, which so reported. The sellers of the horses brought suit on the vouchers issued when the horses were purchased. The Court of Claims held, in substance, that, having power to buy horses for the public, there was necessarily a power to fix a perfectly honest and conscionable price for the horses, and that the price fixed at that time, in the exercise of that war power, must stand, there

being no suggestion that it was not honest and not within the realm of reason, even though a commission afterwards said a somewhat lower price should have been paid. The court declined to allow the $2\frac{1}{2}$ per cent commission, because the Government having already provided certain agencies in the Quartermaster General's Department, through which the general in the field should make his purchases of supplies, he had no authority to go out and employ a different agency and pay that agency an additional compensation. That case, I think, is the chief authority, if your committee should be interested, in the question of implied power.

Senator GORE. In what report is that?

Commissioner ANDERSON. The second volume of Court of Claims reports, page 1. It is the first case. But it seemed to me unnecessary to suggest that the President should exercise a power which is open to any reasonable doubt under the act of August, 1916, when Congress was just about to come in. Consequently, attention was directed as to what was a fair basis to suggest to Congress for compensation. I had figures made up on a period of five years and have them here. I think it comes out something like \$780,000,000. The details, I apprehend, would not interest the committee at the present moment.

It seemed to me that, in view of the fact that the property investment had undoubtedly been increasing, although we could not say what the property investments were, although the investment accounts on the books of the carriers are not to be taken as showing the original investment or the reproduction cost, or as being uniform, under any accepted and well-defined terms—

Senator KELLOGG. During the last 10 years, the commission's regulations control what the books shall show as to addition and betterments in the capital account, do they not?

Commissioner ANDERSON. I am not competent to answer that dogmatically. During the last 10 years the accounts have been kept much more uniformly than before.

Senator KELLOGG. Did not the commission absolutely lay down the rule for keeping the accounts so as to show exactly what the betterments, additions and improvements are capitalized for, and what they cost, so that the commission may know exactly how much has been added to the property each year, during the last 10 years, or about 10 years—I have forgotten exactly?

Commissioner ANDERSON. I do not believe it goes to that extent, but I should not be willing to say flatly "no" to that question. I think that Commissioner Meyer would give you more intelligent and authoritative information as to whether that is true or not. Remember, I have been there only three months, and while I know something about the machinery there, there is a lot of that machinery that I do not know much about. But it is a question that you might well think that a commissioner should be able to answer; and if I had been there three years instead of three months I should not expect to file a caveat.

It is undoubtedly true that, in the past 10 years, the carriers' accounts have been kept in a much more authoritative manner than formerly, but it is not true that the property accounts bear in the aggregate, or in the case of a great many of the carriers, any very accurate relation either to original cost, to reproduction cost, or to

any other theory of cost. I will give you an illustration of what came out the other day. I went up to New England on the application of practically all the New England railroads for an increase in addition to the Fifteen Per Cent Case, and heard it. Among other roads that came in, was the New Haven Railroad. Much discussion arose as to what the return—i. e., the rate of net earning—had been on the carrier part of the New Haven Railroad. The bureau of economics, whose figures you have here, had divided its accounts so as to show it made last year 6½ per cent out of its carrier operations and I think about 1 per cent—I do not care to state with dogmatic accuracy as to the figures, but something like that, on its noncarrier properties. The vice president in charge of accounts said the bureau had not charged up enough of the property as carrier property. Thereupon I made some inquiry as to their carrier property. I found that in a period of some years they had been buying up railroad properties and consolidating them with their own property, and they had charged into the property account, not the property account of the absorbed branch line, but the cost of the stock of the absorbed branch line; so that that was a property account based on investment in stock, in substantial part. It happened, in some instances, that the cost of the stock was closely approximate to the property account of the absorbed constituent carrier and in others that there was a wide difference. Out of some transactions of that kind, they made a lot of money, comparing the cost of the stock with the original cost of the absorbed line. In other cases, where the absorbed line was a good earner, they lost a great deal of money if you compare their purchase price with the cost of the original line.

But the point is, "I was unable to get out of the New Haven accounts any figures which the representatives of the railroads agreed stated anything that anybody would say was a property account for the New Haven Railroad. That recent experience was one reason I was cautious in making the answer I did make, Senator Kellogg, because I think some of those transactions occurred within the 10-year period.

Senator KELLOGG. I am not sure as to 10 years, but I think the commission did make that regulation.

The CHAIRMAN. May I make this suggestion to the committee, that Mr. Anderson be allowed to make his explanation of the bill and then, at the conclusion of his remarks on it, any questions that have suggested themselves in the course of his remarks, the members of the committee may ask. It would preserve the continuity of his explanation so that one reading it will not be deflected by questions that have been asked?

Senator KELLOGG. I have no objection to that.

Commissioner ANDERSON. I thank the chairman for the suggestion that there will be a continuity in my remarks if I am not interrupted, but I repeat, that I am perfectly willing to be interrupted, because I have no set remarks.

The CHAIRMAN. I think the committee would be very glad to have a consecutive statement in reference to the bill in its different sections.

Commissioner ANDERSON. Taking up, then, section 1, it was manifest that it was highly desirable that some sound, just, easily avail-

able, and easily understood basis of agreeing with most of the carriers which were and had been, during a recent period, in a state of normal financial health, should be found and stated—so that contracts could be made which would eliminate the necessity of owners of private property, thus taken for public use, resorting to the courts for their constitutional right to have just compensation.

Section 1, therefore, is drawn not as a mandate, but as a grant of power to agree. It was quite clear that the great bulk of the carrier property involved in this taking under the present proclamation—and under any conceivable extension of the power set forth and exercised under the present proclamation—would be the rail carriers making regular returns to the Interstate Commerce Commission and having accounts reflecting with approximate accuracy (I emphasize “approximate” because when we come to deal with depreciation and maintenance, it is only approximate) their earnings of recent years. It seemed desirable, if possible, to fix a figure, which would be essentially just as between the owners of the carriers’ securities and the taxpayers, and which would also tend to stabilize the financial conditions—which were far from pleasant, as you know, during the fall weeks. There was then, as some of us thought, and as I strongly held, a depreciation of railroad securities not warranted by any intrinsic conditions. Rail securities were worth a good deal more than they were selling for—the best roads, I mean. The community was frightened. It seemed desirable that a basis should be fixed which was so manifestly fair and not overgenerous, that it would tend to reassure the investing public (to which public the Nation must look for further great loans if this war continues) that the owners of property, as well as the owners of lives, would be dealt with on a basis of as nearly absolute justice as human intellect and conscience will permit. We therefore did not feel called upon to resolve every possible doubt against the railroads and in favor of what might be called the public interest. I reached the conclusion on those general grounds that on a five-year basis a sum of \$780,000,000 was inadequate.

I might digress to say that, in the early stages of that study, I had clearly in mind (what obviously others have in mind) and that is that the real relation is between the bond holders and stockholders and the Federal Treasury; that it was for that reason desirable to find some method of dealing directly with the bondholder and stockholder. I abandoned it, after working on it some days, as being utterly impossible of statement within narrow compass, and probably impossible of working out on any just basis. I found that the market prices of stock bore no relation to investment or to sound value; also that you could not deal with the question of dividends in the past as indicating what the dividends should be in the future.

Moreover, if you go into the field of the increase of investment (as the investment has increased within the past three years) there you meet with difficulties and complications—almost creating an inextricable maze. By process of exclusion, therefore, we come to the conclusion that if you take the flat sum represented by what I now call, for convenience, net earnings (hereafter I will undertake to explain what I mean by “net earnings”) for the three years ending June 30 last, it bears the fairest relation to the just demands of the security holders and is most easily applicable to the situation.

I met some embarrassment from the fact that the financial year has now become the calendar year, and the returns of the carriers are not made up as of June 30, as formerly. But we found that was not insuperable, because, with a little supplementation of the monthly returns, figures could be obtained showing the net earnings up to June 30 last. That figure (i. e., the three-year average) I found to be something like 900 million dollars. I found that the net earnings (using the term again subject to subsequent definition) of the carriers last year (meaning by last year, the year ending June 30, 1917) was about a billion and sixty millions; that in 1916 they were about a billion and 25 million, and for 1915 they were very much less—about \$700,000,000. In other words, they have had two big years in which large war profits accrued to the carriers, and the previous year was on the whole a rather poor year; it was worse than 1913; the average fell about \$200,000,000 more than 1915, and was around \$100,000,000 less than in 1916 and in 1917. Meantime the property investment was larger at the end of the period than it was at the beginning of the period. But the figure we selected will be easily available and easily understood. It was a flat rate and had no progressively difficult features to apply.

And so by process of exclusion, going down first one blind alley and then down another, those of us at work on the problem came to the conclusion that (while it was not possible to be dogmatic and say we had hit just the right thing) we had struck a plan or basis that seemed to command general assent as being just, fair, available and easily applied and understood.

Senator POMERENE. Did you have in mind, or take account of the increased investment during the last six months of 1917?

Commissioner ANDERSON. Yes; we had figures and took into consideration what the probable increase had been, and also had some figures as to the rate of return on the increased property; but we came to the conclusion that if we undertook to go into such fine details we would get into unnecessary complications, and would not add anything of substantial value to the final conclusion.

There did arise, under section 1, the question as to what was "net earnings."

The accounting system of the Interstate Commerce Commission involves what is called railway operating revenues (account 501) and railway operating expenses (account 531), and railway operating income, which is the difference between the two, after taking out uncollectible railway revenues (which would seem to me not to be revenue at all, but which are almost negligible), and railway tax accruals, which is an important item. There is a good deal to be said in favor of taking that simple item, "railway operating income," as the basis of computation of the three years' average return. But there are joint facility and joint equipment accounts to be considered; and the argument was that when carrier A furnished joint facilities which were used by carriers B and C, in common with carrier A, so that carrier A got a revenue out of payments from carriers B and C, that carrier A ought to have the benefit of that revenue precisely as much as though it was the owner of B and C, in which case the joint facility would become a single facility, and all revenue accruing therefrom would appear in the earnings of carrier A. It also appeared that carrier A might, in some instances,

have a large amount of freight and passenger cars, adequate to take care of not only all its own needs in the aggregate, but to furnish some to carriers B and C, that had more transportation business than they had equipment and cars; that A, therefore, let out to B and C, as excess equipment. The argument was that the capital investment of carrier A in equipment, which more than met A's needs, would be reflected only in the returns to carrier A from the payments by B and C. There has been a difference of opinion in the history of the commission as to how those accounts should be dealt with. At one time they had them in, so I am told, as operating expenses and income; later they were classed as nonoperating items. At any rate, we finally reached the conclusion, not free from doubt on the part of some of us, that those items of income and expenses accruing from joint facilities and engines and cars, should go in. There is a powerful argument against it, which, as a New England sectionalist, for which I have a great deal of sympathy, that those accounts arise, not out of the fact that carrier A furnishes, out of its own capital, more equipment than it needs for its own business and sublets it to B and C, but rather from the fact that some roads are originating roads and other roads are receiving roads. That is particularly applicable to New England. The roads of the wheat and coal regions get down there, and before the New England lines can get their cars off their lines, under the per diem rule, there is a large charge made against the New England carriers by the originating carriers. It has amounted to something like \$5,000,000 a year as against the Boston & Maine and New Haven roads.

Personally, I should be content (to let you charge me with sectionalism and not stop to defend my reputation) if you eliminated those factors and went back to railway operating income as the basis.

I think a substantial part of those items do grow out of the fact that some roads are originating roads and other roads are receiving roads; and that the charges now made grow out of that relation, and not mainly out of the fact that the receiving roads keep and use for their own purposes and their own profits the equipment of the originating roads. You can get sound, honest opinion, passionate and dispassionate, on both sides of that question.

The other items which are eliminated before you come to "net railway-operating income" are the miscellaneous rents. This is a comparatively small matter, running about \$8,000,000 on the one side and \$6,000,000 on the other, with a net balance of only about \$2,000,000; so it would almost fall into the *de minimis* class; but it might be rather large with some particular carriers. Those arise in part from carrier operations and in part from noncarrier operations.

The object of the Government was to take control, possession, and to utilize the carriers in carrier operations; and to keep as nearly intact and undisturbed as possible the machinery of the constituent corporations and their right to deal with their noncarrier properties and their noncarrier business interests; those should be interfered with by Federal authority as little as may be. There was no other practicable way by which the Government could safely carry out the immense undertaking of possessing, controlling, and utilizing 250,000 miles of railroad, with 1,700,000 employees, and with a complicated and immense machinery, both personal and corporate. The purpose,

you gentlemen will observe, of the proclamation and of the bill is what I might call an evolutionary purpose and not a revolutionary purpose—to preserve and to utilize all existing machinery—except so far as general or special orders directed to coordination and economy and efficiency might change existing methods and relations.

Coming, then, back to the question of miscellaneous rents; those miscellaneous rents arise in part out of carrier properties and in part out of noncarrier properties. Some arise out of properties which are prospectively or retrospectively carrier properties. For instance, a railroad anticipates an extension of its yard and buys a piece of land with a house on it and collects rent for the house before it extends its yard. But the rent from that house is not clearly a carrier operation. In one aspect of the case it might be properly considered as a carrier operation, in another not. Exactly the reverse thing occurred in Boston. They abandoned a terminal years ago. They still own it, or much of it. The railroad has got some income from that property, but that income does not arise out of a carrier operation. Some of those miscellaneous rents arise out of rents paid by owners of stores, in terminals, and tracks. The New York terminal has in it a great many stores. Other stores are not actually in the terminal; then there are buildings like the Yale Club. I do not know how they charge that account. But the Yale Club, as I understand, stands on property which was bought mainly for carrier purposes; whether there is a track under that particular spot I do not know. But you see there is a line about which it is impossible to be dogmatic. We think it better to throw that item into the non-carrier account and not be troubled with it.

Leased-road rents amount to a large sum. The leasing system is the most common form of creating large systems. Most of the leases that I am familiar with are on a basis of rental, made up of payments of interest upon the bonds of the lessor company, plus a stated dividend on outstanding stock of the lessor company.

Senator GORE. Will you please repeat that?

Commissioner ANDERSON. Most of the leases of which I am cognizant have a rental based upon the payment of interest upon the outstanding bonds of the lessor company, including frequently bonds to be issued during the period of the lease for additions and improvements to the lessor properties, plus a dividend upon the outstanding stock of the lessor company, at some agreed rate,—running all the way from a very low rate, to as high as 10 to 12 per cent, plus some agreement generally as to maintaining the property, and making additions and improvements thereon. Those vary according to the trades made.

Senator GORE. The fundamental conditions, then, bear a considerable resemblance to the propositions laid down in this bill?

Commissioner ANDERSON. Oh, I see. Yes. I think that is true. The lessee company generally guarantees to the lessor companies that it will keep their properties up and pay a return on their securities. Frequently there is a provision that the lessor company shall pay for additions and betterments to its properties out of the proceeds of new securities to be issued with the approval of the supervising commissions.

Senator GORE. I should like to ask one question.

The CHAIRMAN. Very well.

Senator GORE. Whether the amount the lessee company agrees to pay on stock bears any relation to the amount the lessor company had been paying.

Mr. ANDERSON. Most of those trades, I think, do grow out of that idea. They have historic and differing foundations, as I remember them—I do not believe I know anything more about that point than you do, Senator—most of them, when it seems advisable that Road A should be leased to Road B, they look over the past and prospective dividends that the A stockholders have been getting, and the lessee company commonly agrees to pay dividends approximately equal. Sometimes they are less and sometimes they are more. It depends, I regret to say, in some historic instances, upon the relations of the board of directors to the ownership of the respective properties concerning which they are trading. But assuming they are trading at arm's length, those would be the considerations ordinarily controlling. Leased lines rents are, in effect, a disbursement for capital purposes. It makes no difference whether carrier A is consolidated with carriers B and C, issuing its own stocks and bonds for the property of carriers B and C, or whether it has guaranteed to pay the interest upon the bonds of carriers B and C, and a stated dividend upon the outstanding stocks of carriers B and C. So far as the relation of net earnings from operation are concerned, the payments on the stocks of the lessor companies and on the bonds of the lessor companies would seem to be identical with payments on the bonds and stocks of the lessee company. Hence, we eliminate them. They are charged in one of these accounts as an expense of the carrier in order to reach what they call "net income." I must not be held responsible for not remembering the exact nomenclature; I plead as a partial excuse that I see in the Bureau of Railroad Economics different nomenclature, therefore I acquire new confusion when I read one set of statistics and compare it with the other. Those were the reasons, gentlemen, why we reached the conclusions we did as to proper basis of computing the standard returns.

You see that it is nothing but a process of excluding, of balancing arguments pro and con; I shall be quite content, personally, to go back to railway operating income as the basis.

Our belief is that the proper basis for compensation is a three years' basis (for the aggregate of the carriers' earnings it is not very material whether you go through the rather fine distinctions which I have made concerning "joint facilities" and "joint use of equipment," "miscellaneous rents," etc., or not; but it is beyond question that "leased line rents" must be dealt with as a disbursement on capital account, as to the others you can go either way without criticism). It is believed that 90 per cent of the carriers would reach agreements with the President on the three years' basis. It is provided that, as to carriers making returns to the Interstate Commerce Commission, their net earnings, called herein "standard return," a term which I will try to use from this point on, shall be ascertained and certified by the Interstate Commerce Commission. Carrier accounts come under oath to the Interstate Commerce Commission. Presumably there are at times errors, but generally such errors are corrected after correspondence or discussion between the accountants of the carriers and the accountants of the commission.

It is therefore appropriate that the amount which was finally determined by the Interstate Commerce Commission should be certified; but the return, as it might have been originally filed, should not be taken as necessarily the determining basis. Our accounting department ought to make whatever changes are found necessary for accuracy before making the final certificate, involving such a large sum.

Then you come to taxes, ordinary taxes, Federal, State, county and municipal; these are war times, and in October, 1917, war taxes were provided for. I think it was Mr. Rea—he has perhaps left the room—when on the stand in the Fifteen Per Cent case, when asked whether war taxes should be borne by the rate payer or by the security holder, answered, in substance, that he thought the security holder should bear them; that security holders in railroads were not entitled to be exonerated from war burdens any more than any other security holder, answered, in substance, that he thought the security at page 2, the proviso “that no Federal taxes in excess of taxes assessed during the year ending June 30, 1917, shall be charged against revenue in computing such standard return” adopts that view.

The taxes accruing out of the October legislation would, therefore, be chargeable against the standard return. It is, of course, a necessary implication that if the Government is to guarantee a standard return, any profits or net earnings accruing in excess of the standard returns would accrue to the guarantor. That is provided for by the language that “any net railway income in excess of such standard return shall be the property of the United States.”

You will next be interested, I apprehend, in knowing, as nearly as may be, that all figures in a matter of this kind are necessarily only approximate. You would not be interested if I told you all the difficulties we have struggled with in reaching as near an approximation as we have. I can only say to you that I believe we have not only a very faithful but a very competent statistical department, which has been most helpful, and I have great confidence that what they state to us always very closely approximates the exact facts.

If you will look now at this little sheet (pp. 440A to 440F), which includes a great deal in a small compass, you will find, on the outside of it, that the net railway operating income for the three years ending June 30, 1917, as defined in House bill 8172, for the purpose of computing standard returns, is, for class 1 steam roads, \$896,259,264. This is based in part on estimates. Class 1 carriers are those having annual operating revenues of more than \$1,000,000, and in the fiscal year 1916 their net operating revenue was 95.87 per cent of the aggregate net operating revenue of classes 1, 2, and 3 roads, and switching and terminal companies. On this basis the \$896,259,264 becomes approximately \$935,000,000 for all carriers indicated above. This does not include the Pullman Co., express companies, or private car lines.

You will want to know next, I apprehend (and I must move on rapidly), what the war taxes will be to come out of that sum of \$935,000,000. You will find it on this single sheet. It could not be computed with even the approximate accuracy of the other figures. It is a very complicated process. The bureau of statistics figure it will be less than \$90,000,000 and more than \$50,000,000.

Senator POMERENE. It will therefore have to be assumed.

The net railway operating income for the three years ending June 30, 1917, as defined in H. R. 8172 for the purpose of computing standard return, is for Class I, Steam roads, \$896,259,264. This is based in part on estimates. Class I carriers are those having annual operating revenues of more than \$1,000,000, and in the fiscal year 1916, their net operating revenue was 95.87 per cent of the aggregate net operating revenue of Classes I, II, III roads, and switching and terminal companies. On this basis the \$896,259,264 becomes approximately \$935,000,000 for all carriers indicated above. This does not include the Pullman Company, express companies, or private car lines.

Statement of income and reported investment in road and equipment of steam roads having annual operating revenues of more than \$1,000,000 excluding switching and terminal companies, 1912-1917. Compiled from reports made to the Interstate Commerce Commission.

Year— June 30	Railway operating revenues.	Railway operating income. ¹	Net railway oper- ating income as defined below. ²	Investment in road and equip- ment—book value. ³	Ratio of column (d) to (e).	Average for three years, 1915-1917.
(a)	(b)	(c)	(d)	(e)	(f)	(g)
					<i>Per cent.</i>	
1917.....	\$3,791,651,529	\$1,061,814,427	^a \$1,020,800,000	^a \$17,250,000,000	5.91	Column (d):
1916.....	3,381,597,866	1,024,381,299	984,872,959	16,872,373,900	5.84	\$896,259,264
1915.....	2,871,563,047	716,476,186	683,104,833	16,499,124,491	4.14	Column (e):
1914.....	3,031,326,963	692,330,572	661,018,147	16,077,330,839	4.11	\$16,873,832,797
1913.....	3,104,361,215	816,510,793	787,610,435	15,553,559,036	5.06	Per cent: 5.31
1912.....	2,805,006,544	736,466,326	708,484,383	15,018,762,958	4.72	

¹ Railway operating income means railway operating revenues less taxes and uncollectible railway revenues.

² "Net railway operating income" is the basis for the "standard return" proposed in pending bill, being railway operating income (column c), modified by debits and credits arising from equipment and joint facility rents, but not including debits and credits from leased road and miscellaneous rents.

³ Road and equipment account of Class I operating roads plus road and equipment account of all non-operating subsidiaries. Probably includes some duplication. Reserve for accrued depreciation not deducted.

⁴ In columns (d) and (e) estimated figures are used for the year 1917.

Statement of income, investment, and capitalization of all steam roads for the year ending June 30, 1916.

Railway operating revenues:		
Class I.....		\$3,381,597,866
Class II.....		75,334,775
Class III.....		15,709,300
Switching and terminal.....		48,500,735
Total.....		<u>3,521,142,676</u>
Railway operating income:		
Class I.....		1,024,381,299
Class II.....		18,288,737
Class III.....		1,932,554
Switching and terminal.....		11,519,807
Total.....		<u>1,056,122,397</u>
Net railway operating income as defined in pending bill as a basis for "standard return:"		
Class I.....		984,872,959
Class II.....		16,733,311
Class III.....		1,328,521
Switching and terminal.....		24,210,277
Total.....		<u>1,027,145,068</u>
Total income available for rental for lease of road, interest on funded debt, dividends, improvements, and income balance to profit and loss:		
Class I.....		1,136,581,817
Class II.....		16,219,534
Class III.....		297,924
Switching and terminal.....		24,001,135
Total.....		<u>1,177,100,410</u>

440B GOVERNMENT CONTROL AND OPERATION OF RAILROADS.

Property investment:

Class I.....	\$13,926,181,880
Class II.....	670,679,642
Class III.....	159,159,677
Switching and terminal.....	413,724,454
Nonoperating.....	¹ 2,986,914,219

Total..... 18,156,659,872

Capital stocks and bonds:

The reported outstanding railway capital of Classes I, II, and III, and switching and terminal companies and their subsidiaries was—

Total..... 21,583,746,569

Net, after deducting amounts held by railway companies was 16,710,650,327

JANUARY 28, 1918.

Statements compiled from annual reports of steam railway companies to the Interstate Commerce Commission by its Bureau of Statistics.

[As explanatory of the class of companies included in the statement, it should be understood that Class I companies are those having annual operating revenues above \$1,000,000; Class II companies are those having annual operating revenues from \$100,000 to \$1,000,000; and Class III companies are those having annual operating revenues below \$100,000.]

Statement of railway capital stock and funded debt for the years ended June 30, 1902 to 1916 Class I, II, and III companies and their nonoperating subsidiaries.

[Compiled from annual reports of carriers to the Interstate Commerce Commission.]

Year ended June 30— (a)	Capital stock and funded debt outstanding. (b)	Capital stock outstanding. (c)	Ratio of column (c) to column (b). (d)	Funded debt outstanding. (e)	Ratio of column (e) to column (b). (f)
			<i>Per cent.</i>		<i>Per cent.</i>
1916.....	\$21,092,072,245	\$9,058,682,733	42.95	\$12,033,389,512	57.05
1915.....	21,127,959,078	8,964,894,721	42.57	12,133,064,357	57.43
1914.....	20,247,301,257	8,680,756,704	42.87	11,666,541,553	57.13
3-year average, 1914-1916.....	20,822,444,193	8,911,445,719	42.80	11,910,998,474	57.20
1913.....	19,796,125,712	8,610,611,327	43.50	11,185,514,385	56.50
1912.....	19,752,536,264	8,622,400,821	43.65	11,130,135,443	56.35
1911.....	19,208,935,081	8,470,717,611	44.10	10,738,217,470	55.90
3-year average, 1911-1913.....	19,585,865,686	8,567,909,920	43.75	11,017,955,766	56.25
1910.....	18,417,132,238	8,113,657,380	44.05	10,303,474,858	55.95
1909.....	17,487,868,935	7,686,278,545	43.95	9,801,590,390	56.05
1908.....	16,767,544,827	7,373,212,323	43.97	9,394,332,504	56.03
3-year average, 1908-1910.....	17,557,515,333	7,724,382,749	43.99	9,833,132,584	56.01
1907.....	16,082,146,683	7,356,861,691	45.75	8,725,284,992	54.25
1906.....	14,570,421,478	6,803,780,093	46.69	7,766,661,385	53.31
1905.....	13,805,258,121	6,554,557,051	47.48	7,250,701,070	52.52
3-year average, 1905-1907.....	14,819,275,427	6,905,059,612	46.60	7,914,215,816	53.40
1904.....	13,213,124,679	6,339,899,329	47.98	6,873,225,350	52.02
1903.....	12,599,990,258	6,155,559,032	48.85	6,444,431,226	51.15
1902.....	12,134,182,964	6,024,201,295	49.65	6,109,981,669	50.35
3-year average, 1902-1904.....	12,649,099,300	6,173,219,885	48.80	6,475,879,415	51.20

¹ Subsidiary to Classes I, II, and III and switching and terminal.

² The figures for the years 1913 and 1914 include only Class I and II roads and their nonoperating subsidiaries.

NOTE.—The data in columns (b), (c) and (e) represent total outstanding securities, including securities held by or for the issuing companies.

The figures for the years 1902 to 1907, inclusive, do not include certain securities which were classified during these years as "current liabilities," and which since 1907 have been included in "Funded debt." The figures for these years also include the capital stock and funded debt of switching and terminal companies. Thus it will be noted that the data are not strictly comparable with those shown for later years.

GOVERNMENT CONTROL AND OPERATION OF RAILROADS. 440C

Statement showing the percentage of outstanding railway capitalization not held by railway companies as of June 30, 1910 to 1916.

[Compiled from annual reports of carriers to the Interstate Commerce Commission.]

Year ended June 30—	Total capital stock out-standing.	Net amount not held by railway companies.	Ratio of column (c) to column (b).	Total funded debt out-standing.	Net amount not held by railway companies.	Ratio of column (f) to column (e).
(a)	(b)	(c)	(d)	(e)	(f)	(g)
			<i>Per cent.</i>			<i>Per cent.</i>
1916.....	\$9,058,682,733	\$6,314,570,354	69.71	\$12,083,389,512	\$10,021,730,075	83.28
1915.....	8,994,894,721	6,125,570,387	68.10	12,133,064,357	10,181,932,193	83.92
1914 ¹	8,680,759,704	6,041,976,192	69.60	11,566,541,553	9,717,117,721	84.01
3-year average, 1914-1916.....	8,911,445,719	6,160,705,644	69.13	11,910,998,474	9,973,593,330	83.73
1913 ¹	8,610,611,327	5,840,709,612	67.83	11,185,514,385	9,525,762,641	85.16
1912.....	8,622,400,821	5,796,698,613	67.23	11,130,135,443	9,328,834,872	83.82
1911.....	8,470,717,611	5,874,783,419	69.35	10,738,217,470	9,169,699,475	85.39
3-year average, 1911-1913.....	8,567,909,920	5,837,397,215	68.13	11,017,955,766	9,341,432,329	84.78
1910.....	8,113,657,380	5,568,525,282	68.61	10,803,474,858	8,817,004,466	85.57

¹ Includes only Class I and II roads and their nonoperating subsidiaries.

NOTE.—Comparable data for years prior to 1910 are not available principally because of the fact that corresponding compilations were not made for those years.

Statement showing certain "Income account" and "Balance sheet" items and percentage that "Interest on funded debt" (A) bears to outstanding "Long-term debt," not held by or for issuing company; and also the per cent of net income to "Capital stock" not held by or for issuing company, Class I Roads, for the years ended June 30, 1912, to 1916.

[Compiled from annual reports to the Interstate Commerce Commission.]

Year ended June— (a)	Railway operating revenues. (b)	Railway operating income. (c)	Interest on funded debt. (d)	Long-term debt actually outstanding. (e)	Ratio of column (d) to column (e). (f)	Net income. (g)	Capital stock actually outstanding. (h)	Ratio of column (g) to column (h). (i)	Net income plus interest on funded debt. (j)	Total capitalization actually outstanding. (k)	Ratio of column (j) to column (k). (l)
1916.....	\$3,381,597,896	\$1,024,381,290	\$399,348,125	\$9,519,657,559	Per cent. 4.19	\$603,222,893	\$6,953,101,818	8.68	\$1,002,571,018	\$16,472,759,377	Per cent. 6.09
1915.....	2,871,567,047	876,476,186	387,029,566	9,503,480,873	4.08	315,156,078	6,822,656,883	4.63	703,185,644	16,412,137,754	4.28
1914.....	2,631,226,982	692,330,792	373,294,354	9,120,533,946	4.09	350,721,618	6,846,856,608	5.12	734,017,972	15,947,087,564	4.53
1913.....	3,08,361,213	816,510,793	368,134,889	8,828,438,187	4.17	485,745,995	6,805,708,696	7.14	833,880,884	15,652,224,896	5.16
1912.....	2,806,006,544	736,466,326	359,881,461	8,781,134,703	4.10	400,624,183	6,740,185,012	5.94	760,505,654	15,521,292,715	4.90

¹ "Interest on funded debt" includes interest on all forms of long-term debt, i. e., obligations maturing more than one year after date of issue.

Statement showing certain "Income account" and "Balance sheet" items and percentage that "Interest on funded debt" bears to outstanding "Long-term debt" not held by or for issuing company; and also the per cent of net income to "Capital stock" not held by or for issuing company, Class II roads, for the years ended June 30, 1912, to 1916.

[Compiled from annual reports to the Interstate Commerce Commission.]

Year ended June 30— (a)	Railway operating revenues. (b)	Railway op- erating income. (c)	Interest on funded debt. (d)	Long-term debt actually out- standing. (e)	Ratio of column (d) to column (e). (f)	Net income. (g)	Capital stock actually out- standing. (h)	Ratio of column (g) to column (h). (i)	Net income plus interest on funded debt. (j)	Total capital- ization actually outstanding. (k)	Ratio of column (j) to column (k). (l)
											<i>Per cent.</i>
1916.....	\$75,334,775	\$18,288,737	\$13,382,770	\$348,277,360	(1)	\$3,051,872	\$379,837,134	.80	\$16,434,642	\$729,114,494	2.25
1915.....	69,912,066	11,676,037	14,405,155	419,060,781	(2)	± 4,571,759	384,804,209	± 1.19	9,833,396	803,884,970	1.22
1914.....	80,069,459	13,294,562	12,394,224	407,640,677	(3)	± 3,515,618	383,820,480	± .89	8,878,006	801,461,157	1.11
1913.....	84,796,819	18,678,991	12,010,253	414,260,691	(4)	2,800,484	383,183,615	.71	14,810,737	807,444,306	1.83
1912.....	85,474,065	19,311,751	13,623,730	417,676,641	(5)	1,432,900	387,128,309	.37	15,056,630	808,806,950	1.87

¹ This ratio not computed, as the result may be misleading, principally because the amounts shown in column (d) apparently do not include accruals of interest on all of the securities shown in column (e). This is due to receiverships, income bonds on which no interest is earned, nonaccrual of interest on advances from controlling companies, etc. For example, the receiver of one company reported \$50,226,000 funded debt outstanding for the year ended June 30, 1915, but did not include any amount of interest accrued on these bonds in the income account. Another company reported \$1,380,000 of income bonds, but did not accrue any interest on such bonds for the year mentioned.

² Deficit.

Statement showing certain "Income account" and "Balance sheet" items and percentage that "Interest on funded debt" bears to outstanding "Long-term debt," not held by or for issuing company; and also the per cent of net income to "Capital stock" not held by or for issuing company, Class III roads, for the years ended June 30, 1912 to 1916.

[Compiled from annual reports to the Interstate Commerce Commission.]

Year ended June 30— (a)	Railway operating revenues. (b)	Railway op- erating income. (c)	Interest on funded debt. (d)	Long-term debt actually out- standing. (e)	Ratio of column (d) to column (e). (f)	Net Income. (g)	Capital stock actually out- standing. (h)	Ratio of column (g) to column (h). (i)	Net income plus interest on funded debt. (j)	Total capital- ization actually outstanding. (k)	Ratio of column (j) to column (k). (l)
1916.....	\$15,709,300	\$1,932,554	\$2,305,992	\$63,935,786	Per cent. (1)	\$2,260,870	\$92,183,744	Per cent. 2.45	\$45,122	\$156,119,530	Per cent. 0.03
1915.....	14,718,089	816,786	2,488,526	66,465,116	(2)	\$3,205,752	100,122,869	3.20	\$717,226	166,607,965	0.43
1914.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
1913.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
1912.....	15,935,280	1,761,658	2,480,483	63,632,126	(3)	\$2,237,192	121,181,462	1.85	243,291	184,813,608	.13

¹ Comparable figures for this year not available.

² See note (1), page 440r

³ Deficit.

Commissioner ANDERSON. Given a standard return for the carriers now taken over, except the Pullman Co. and private car lines, of about \$935,000,000, of that standard return not less than 50 or more than 90 millions of dollars will be taken back by the Government in the form of war taxes, leaving the carriers covered by that statement a sum not exceeding \$885,000,000 and possibly as low as \$845,000,000.

If you will look at page 2 you will see the method stated in a little more detail and how the method is reached. In the first column you have the railway operating revenues for the year 1917—these are all June 30th years; an estimate is made for the returns of the smaller carriers as they are not yet complete, but for legislative purposes these figures are sufficiently accurate, so you will not be misled on any question of substantial policy.

“Railway operating income means railway operating revenues less taxes and uncollectible railway revenues.” Those are the normal taxes which were assessed under the law prevailing up to June 30, last.

The next is net railway operating income, as defined below “B;” net railway operating income is the basis for the “standard return” proposed in the pending bill—

Senator GORE. What is that?

Commissioner ANDERSON. Net railway operating income is the basis for the “standard” return proposed in pending bill, being railway operating income (column C) modified by debits and credits arising from equipment and joint facility rents, but not including debits and credits from leased roads and miscellaneous rents.

You will observe, gentlemen, that the figures do not widely differ in the aggregate applicable to the whole country. For instance, railway operating income for the year 1917 is \$1,061,814,427, and modified into standard return, taking out the taxes and credits from leased roads and miscellaneous rents, you have \$1,020,800,000. Part of that is estimated, and hence the round figures. In other words, there is \$41,000,000 off in the aggregate.

You will be somewhat interested in the next column, investment in road and equipment—book value. I need not repeat what I said as to book value and investment figures in the early part of my statement this morning.

Senator McLEAN. You stated you had your attention called to the method adopted by the New Haven road, stating that they put in a branch line at the cost of the stock. Is that an objectionable way to estimate the value of that property?

Commissioner ANDERSON. It depends for what purposes you are using the book value. The argument in favor of it is that that is what is cost them.

Senator McLEAN. As a member of the Interstate Commerce Commission, on the returns that come to you, is there any objection to that?

Commissioner ANDERSON. I do not think I am competent to answer that, as to how the returns should be made. I have not the remotest doubt that as between the investing public and the traveling public you should give, as nearly as you can, to the people that put up their money a fair return on their actual investments and not on speculative values.

Senator McLEAN. You remarked that these properties in some instances were worth actually more than the market value of the stocks.

Commissioner ANDERSON. Sometimes they were worth more—cost more—and had been proved to be worth more. For instance, the New Haven has the Central of New England. Heaven knows what would have happened to it if the New Haven did not take it. They took it over, however, and they fixed it up, and it is a very profitable property now.

Senator McLEAN. Certainly this system represents an actual application of the funds.

Commissioner ANDERSON. No; that is not always true, because oftentimes it represents a mere swapping of stocks.

Senator WATSON. Did not the Interstate Commerce Commission compel them to do what they did?

Commissioner ANDERSON. Yes, sir; I so understand; but do not be misled as to what the property investment shows—and observe I am not making any charges against anybody.

Senator GORE. One of the difficulties is that you call different things by the same name.

Commissioner ANDERSON. That is correct. I have a notion that the Pennsylvania Railroad property account may be less than the value of the property on its fair valuation. I do not know anything about it, but that is its reputation. There are other roads that have the reputation of having understated their property accounts; others have the reverse reputation. All I have to say is that you must treat that account with caution and not be misled.

Senator McLEAN. The property account rule was laid down by the Interstate Commerce Commission; and that rule represents your best judgment about it, does it?

Commissioner ANDERSON. That represents the best judgment of men who have been on the commission for years, but I am not responsible for the rule. I am not attacking it either. They had to deal with a condition and not a theory. They had a lot of carriers that kept their accounts in all kinds of confusing ways, and the Interstate Commerce Commission, under a series of rules and rulings, extending over a period of years, attempted to bring the accounting systems of the carriers into a sounder and better system. In that effort they have had cooperation from a great many of the executives and accountants in the carrier companies. But a result has not yet been reached which is satisfactory to any sound thinking man on either side of that fence. It would be very much more satisfactory to say just what investment in road and equipment means now, in words that we would clearly understand; but we can not do it. There is no doubt, however, that the figures in this fifth column, showing the increases during 1915, 1916, and 1917, bear some closely approximate relation to the actual facts; that is, for the purpose of comparison, year with year, they are illuminating; and for that reason we present them.

You will observe that for the year 1917 our statisticians estimate that the investment in road and equipment—book value—was 17½ billions; that the year previous it was \$16,872,000,000, in round figures, and for the year prior to that it was \$16,499,000,000, in round figures. It follows, if you compare those three figures, that

between the year ending June 30, 1916, and June 30, 1917, there was an additional investment in carrier property of about \$373,000,000 only. In the next year there was an investment of about \$380,000,000 only.

You will see in the next column (column 7) that the standard return figured upon that basis of property account for 1917 will be 5.91 per cent; and that that is the largest return in percentage during any of the six years for which figures are given in this tabulation: that the next largest figure is for 1916, which is 5.84; that the next is for the year 1913, which was 5.06; that the lowest is for the year ending June 30, 1914, which was 4.11; that 1915 is but little better than 1914, that being 4.14.

The last column is based, as I understand it, upon the average of the property account for the three years, being \$16,873,832,797. The average return on that average property holding for the three years would be 5.31. You understand it so, do you not, Mr. Patterson?

Mr. PATTERSON. Yes; that is correct.

Commissioner ANDERSON. I call your attention to the fact that the 5.31 per cent is larger than the average return made upon the property of the carriers in any year prior to the year ending June 30, 1916, the nearest earning to that figure being the earning in 1913, which was 5.06.

I think that the next page requires no detailed explanation. It shows you, in a little more detail, the statement of income, investment, and capitalization of all steam roads for the year ending June 30, 1916.

Senator ROBINSON. What roads are embraced in classes 2 and 3?

Commissioner ANDERSON. Class 2 embraces roads which are earning between a million and a hundred thousand dollars, and class 3 under \$100,000—the smaller roads.

Lines 19 to 23, page 2, the end of section 1, contain an important provision on which different views are quite possible. As drawn there, it provides that—

During the period of such Federal control adequate depreciation and maintenance of the properties of the carriers shall be included as a part of the operating expenses or provided through a reserve fund in accordance with such principles and rules as shall be determined by the President.

That is a very important matter and not one easy to dogmatize concerning. I had made up at the Interstate Commerce Commission a mass of figures as to how the carriers have been dealing with depreciation and maintenance, and I found nothing like uniformity or adherence to any arguably sound system. Some of them are probably charging too much, but I am afraid that more of them are charging too little. Speaking from recollection, I think that depreciation on equipment runs all the way from one-half of 1 per cent to 6 per cent per year. Of course one-half of 1 per cent a year will not begin to take care of depreciation, and 6 per cent per year will more than take care of depreciation in ordinary times. There is nothing like a standard or basis ascertainable from examining our accounts of depreciation of property or maintenance of property.

Senator WATSON. Of course there is nothing that could be established that would be satisfactory.

Commissioner ANDERSON. I would not want to answer that flatly. I think, however, they can easily reach methods which will be more satisfactory than those now used.

Senator WATSON. I think that is quite true, because if there is such a wide range, there must be some possibility of improvement.

Commissioner ANDERSON. I think there should not be any such wide range as exists between one-half of 1 per cent and 6 per cent. A road which is only charging one-half of 1 per cent is skinning its property and will eventually go on the rocks. Whether the 6 per cent road is absorbing too much I do not know.

Senator CUMMINS. If this property is ever turned back to the railway companies and turned back in as good condition as taken, it will solve that whole question, will it not?

Commissioner ANDERSON. That is the first impression I had, and I put it into this bill, but on reflection I do not think the problem is so easy as that. The bill, as now drawn, says the carriers shall have adequate depreciation and maintenance. This seems a simple statement to the effect that you shall keep the properties as good as they now are, so that you will turn them back as good as you got them, but it overlooks a very important consideration, that you are going to pay a rent based on returns which reflect no uniformity as to what is really net earnings. In other words, the half of 1 per cent people have had their bookkeeping reflect earnings from their equipment that they never made at all, because they never charged enough for depreciation and maintenance expenses to keep their property up.

The 6 per cent carrier, if it is twice as much as they ought to charge, earns a great deal more than its books show. As a practical matter you must fix your rental upon the net earnings as shown by the books and returns. But reconsideration of that problem and discussion—particularly with Commissioner Meyer, who is a very sound-thinking man—leads me to say that that part of section 1, as now drawn, is not just. There is no warrant for the Government's saying it will deal with carrier A, that has kept up its property—and perhaps a little more than kept up its property—before it has made any return as net operating revenue, on the same basis that it deals with carrier B, that has been skinning its property.

If you are to take their returns as the basis of your rental, I do not see why you must not carry the same principle into the maintenance and depreciation accounts, i. e. deal with them as the respective carriers have dealt with them.

Senator WATSON. That is the only way you have to determine whether the road will be in as good condition when you turn it back as now.

Commissioner ANDERSON. It may not be in as good condition, if you adopt the methods prescribed by the carriers. I have here another draft, but I should like to reserve the right, after we have had further discussion, to submit on that point, and perhaps on some other points, perfecting amendments that will reflect our final views as to what is just—but permit to put the views we have so far formulated—

Senator CUMMINS. Whom do you mean by "we?"

Commissioner ANDERSON. Judge Payne, who is chief counsel for Mr. McAdoo, and when I can get at him, I get at Mr. McAdoo and

discuss the measures with him—I have discussed the bill in some cases with some of my associates on the commission.

Senator CUMMINS. I did not know whether you meant the commission or just those who are generally interested in the problem.

Commissioner ANDERSON. I think it fair to say that I have done most of the initial work and then had my views corrected and revised by discussion with Judge Payne; I have had less time with the director. Three or four of us have taken the main responsibility for this bill.

Senator POMERENE. May I ask, before passing—this depreciation and maintenance under the provisions of this bill are to be determined in accordance with such principles and rules as shall be determined by the President? Now, if those rules and principles can be determined by the President, would it be practicable to attempt to determine them as a matter of legislation? In other words, would it be practicable to write these rules and regulations in the statute itself?

Commissioner ANDERSON. I do not think you could do that. I think it is a matter so highly technical—

Senator POMERENE. I had not thought about it. It just occurred to me, that if it were possible to do it, without leading to injustice, it might be well to do it.

Senator CUMMINS. The difficulty is, as I perceive it, and as you stated it, we are to ascertain a standard return. That is based on charges that have heretofore been made by the railroad companies for depreciation, and there is no way of making them uniform.

Commissioner ANDERSON. As to the past, that is quite right. I have made this draft of an amendment, which will illustrate your point:

“During the period of Federal control each carrier may charge to operating expenses for depreciation and maintenance on its several classes of property, a sum not to exceed the sums of the average rates charged by it on such classes of property during the three years ending June 30, 1917; provided that the President may authorize different rates if the public interest so requires.”

Senator POMERENE. Taking cases such as you instanced awhile ago, where there is a depreciation charge of only one-half of 1 per cent, which you say is grossly inadequate, certainly there should be a greater charge than that one-half of 1 per cent while under Government control.

Commissioner ANDERSON. Is it not necessary in such consideration to keep distinctly in mind the difference between past charges to depreciation and maintenance, for the purpose of determining a rental bond on average earnings and making the necessary additions for maintenance, renewals, etc.—which will adequately take care of depreciation? I think I confused my own mind on that point when I made the draft which is here printed.

Senator WATSON. Does this take renewals into account?

Commissioner ANDERSON. I think they are covered as either depreciation or as maintenance, but there is much discussion as to what depreciation is and how it is best dealt with.

Senator WATSON. That is what I wanted to get at, the demarcation you made in your mind.

Commissioner ANDERSON. I never made any exact demarcation. What we mean by those phrases is, "Keeping your property up." There is an immense discussion as to what that really involves.

Senator CUMMINS. This paragraph refers to future accounts to be kept by the railroad companies. Is it in your mind that this agreement in regard to depreciation in the future is to be in lieu of the natural obligation of returning the property in as good condition as when taken?

Commissioner ANDERSON. I do not think I could answer that yes or no. I am not quite sure I know what it means.

Senator CUMMINS. We prescribe a standard return. The charges that are made for depreciation in the future will not affect that return in any way.

Commissioner ANDERSON. That is true.

Senator CUMMINS. And I believe there is a legal obligation on the part of the Government to return this property, whenever it is returned, in as good condition as when taken, if we are simply providing for compensation for its use. Now, then, if we permit these companies to charge off in the future their depreciation in accordance with their own rules, does that fulfill our obligation to return the property in as good condition as when taken?

Commissioner ANDERSON. The answer is yes and no. The obligation of the Government is double or takes a double form. It is to pay a just compensation and to keep the property up, and the difficulty is that in determining just compensation you are dealing with accounting methods kept by the carriers themselves which have no uniformity as to these important items of depreciation and maintenance. Carrier A, for the purpose of illustration, shows a standard return on the basis stated in the earlier part of section 1, we will say, of \$5,000,000; but when you get at the real facts, you will find it ought to have charged off \$500,000 more than it did to keep up its property; that therefore, it has exaggerated its net earnings; instead of being \$5,000,000, they were really only \$4,500,000. Now, the standard return that you are going to figure on the basis set forth in the earlier part of section 1—and we can not figure on any other basis that will be both just and available—will be \$5,000,000. But if you also say you are going to "*keep the property up*" and turn it back fully maintained during the Federal control, you have added \$500,000 more; so you are paying really \$5,500,000 instead of \$4,500,000, the carriers' actual net earnings.

Senator CUMMINS. We do not have to turn it back in better condition than found. If the depreciation is not enough to keep it up, we are not under obligation to restore it.

Commissioner ANDERSON. That does not quite hit it. It is a little bit elusive. If you take over a railroad and agree to pay \$5,000,000 and keep its property up, you keep a property up at a cost of \$500,000 a year more than the owner was putting into it; you really pay \$5,500,000. Whereas if the books had reflected actual conditions, the owner was entitled to but \$4,500,000; that is what you do with carrier A, so—

Senator KELLOGG. Stating it another way, one-half of 1 per cent in the future would not keep the properties up to the present conditions?

Commissioner ANDERSON. No.

Senator KELLOGG. And if you are going to pay them \$5,000,000 income, there should be deducted from that a sufficient percentage in the future to keep the property up to the present conditions.

Commissioner ANDERSON. Precisely. If you were dealing with accounts which reflected sound and adequate depreciation and maintenance in the past, then your standard return would be perfectly fair; but if you take accounts which are based upon unsound and deficient or upon excessive depreciation and maintenance accounts for the purpose of fixing your flat rentals; and then project into the future control, sound and adequate depreciation and maintenance accounts, you have really varied your basis without thinking about it. It escaped me and my associates at first. Commissioner Meyer is entitled to the credit of calling my attention to the fact that we had made an error.

Senator CUMMINS. Will you read the proposed amendment you have?

Commissioner ANDERSON. Yes, sir, but I still am under the caveat that I made when I first read this:

During the period of Federal control, each carrier may charge to operating expenses, for depreciation and maintenance on its several classes of property, sums not exceeding the sums of the average rates charged by it on such classes of property during the three years ending June 30, 1917: *Provided*, That the President may authorize different rates if public interest so requires.

That is undoubtedly the sound general principle which should be carried forward.

Senator POMERENE. Has the Interstate Commerce Commission given expression as to what it would determine as proper rules for determining depreciation?

Mr. PATTERSON. They have never prescribed any uniform rules in reference to the question of depreciation.

Commissioner ANDERSON. Have they on equipment?

Mr. PATTERSON. No. They have simply prescribed that the carriers shall apply something for depreciation.

Commissioner ANDERSON. It appeared in my investigation of the New Haven that they had not charged depreciation as the commission required.

Mr. PATTERSON. May I ask a question on this subject in order to clear up a point?

The CHAIRMAN. Yes.

Mr. PATTERSON. Mr. Anderson, with reference to this question of maintenance, in this provision of the bill, as it now stands, will it enable the railroad companies to conform to what is a proper practice of charging into its account a charge for maintenance even though during the period the road were not available?

Commissioner ANDERSON. The first or second one?

Mr. PATTERSON. The first one; in other words, does the provision as to reserve apply to track maintenance as well as—

Commissioner ANDERSON. It was so intended; when I came to the question of whether you could do it during these strenuous times, I put in the language "or provided through a reserve fund."

The CHAIRMAN. The general principle of this is that the Government will charge off just what has been charged by the several railroads, with the privilege of addition or subtraction, as actual

experience may determine as to what should be charged for as depreciation and maintenance.

Commissioner ANDERSON. Yes, sir; for the purpose of determining what you will pay them. It does not follow because a carrier has allowed its property to run down during the three years, that the Government will continue to allow it to run down; but it does follow that you will not charge to operating expenses enough to take full care of the property that they have been allowing to run down, giving them, nevertheless, a rental based on the theory they have been taking care of the property when they have not. It indicates, as I stated a while ago, in carrier A's case, it would get a million dollars a year more than it is entitled to.

Take the reverse, the case of Carrier B, which also shows \$5,000,000 net earnings. But it has charged into operating expenses \$500,000 for what is really additions and betterments; its real earnings were, therefore, \$5,500,000. But you do pay it but \$5,000,000—what its books show. In other words, as my illustration shows, you offer a reward to carriers that have been skinning their property and give them, under that method, a million dollars more than they are entitled to; and you rob the people who have been more than keeping their property up of a million dollars. That is the way that error works out.

I will, therefore, if permitted by the committee, submit at a later stage, as the matured result of our considerations, the exact form that this provision should take. The sound principle is in the one I have read, but I would like to work further over the best method of providing for a reserve fund or other means of taking care of contingencies which may arise.

I have taken more time than I ought on section 1. I think I can finish section 2 in a moment.

The CHAIRMAN. Are there any members of the committee who would like to ask any questions as to section 1? There being none, apparently, you may proceed with section 2.

Commissioner ANDERSON. Section 2 is very simple. There are some carriers that will not settle under section 1, and others that ought not to settle under the provisions of section 1. There are some carriers which have been in substantial part built during the three-year period, and whose earnings are not reflected fairly in the three-year period.

It is desirable not to disturb security markets pending a determination of what payments would be fair and just. Section 2 provides, therefore, that if no such agreement is made, the President may nevertheless pay or cause to be paid to any carrier while under Federal control, an amount not exceeding 30 per centum of such standard return, remitting such carrier to its legal rights in the Court of Claims for any balance claimed; and any amount thereafter found due above the amount paid shall bear interest at the rate of six per centum per annum; and any excess amount paid hereunder shall be recoverable by the United States, with interest at the rate of six per centum per annum.

Senator CUMMINS. That is, you intended that section to apply to cases that are taken care of under section 3?

Commissioner ANDERSON. Yes, sir; so that pending a settlement an income of 90 per cent of what should go to the security

holder can be paid, within the discretion of the President. If he should happen to overpay them there should be a right to recover it back. It is desirable, of course, that all income accruing under Federal control should be as speedily paid as may be, in order to stabilize market conditions. That is the purpose of section 2.

Section 3 is an important section, and deals with nonagreeing carriers.

The CHAIRMAN. Our hour of recess having arrived, we will take a recess until 2 o'clock p. m.

(Whereupon, at 12 o'clock noon, a recess was taken until 2 o'clock p. m. of the same day.)

AFTER RECESS.

The committee met at 2 o'clock p. m., January 11, 1918, pursuant to the taking of recess.

The CHAIRMAN. The committee will come to order. Mr. Anderson, you may proceed now.

STATEMENT OF COMMISSIONER GEORGE W. ANDERSON—Resumed.

Commissioner ANDERSON. Mr. Chairman, I had completed most of what I thought it desirable to say about section 1, and substantially all about section 2; but I venture to add this observation as to section 1. It may clarify the committee's thinking if they remember that section 1 has as its main purpose the granting of power to the President to fix the financial returns by agreement with the carriers. It is what I might call the "rent agreeing" section. It does not refer to the maintenance of the properties, as a physical fact, during the period of Federal control. It was failure to keep that vital distinction—necessarily vital distinction—in mind, that led to my own confusion of thought, and my putting into section 1, something that had reference to the proper maintenance of properties; whereas the section really dealt only with the question of a proper return to the owners of the property, figured upon their own business methods during the three-year period.

I think that one or two questions asked this morning indicated that some of the Senators had the same natural confusion of thought as to the real purpose of section 1. I may say that, because I had it myself and held it a long time, and my associates had it.

Section 3 is a vitally important section. It is, of course, to be assumed that any private property taken for public purposes results in a claim for just compensation. It does not result in a right to a jury trial. Amendment 7, I think it is, to the Constitution, providing for jury trials in cases of \$20 and more, arising at common law, has been ruled not applicable to property taken by the Government for public purposes. But "due process of law" requires that every person whose property is taken for public purposes shall have by due process of law and some just and adequate method of determining the compensation accruing.

Now, it is expected that under section 1 a great majority of the carriers, which are in normal health and have been for the three-year period, will find themselves easily agreeing with the President upon

what shall be paid them for the possession, control and use of their property.

There are others, small, unprosperous, new, reorganizing—perhaps a few that are cantankerous—that will not come in under section 1. They must as a matter of practical business sense, as well as a matter of constitutional right, have an adequate provision for the determination of their rights. That we have undertaken to do in section 3. Of course, you might remit them all to the Court of Claims, as the court of first instance; but that would probably throw into that court an entirely unnecessary burden of apparent litigation, much of it not being real litigation. It would give a litigious aspect to trading proceedings, which it is desired to avoid; at the same time it might overwhelm the Court of Claims. It seemed, therefore, after pretty careful consideration, that some tribunal should be provided that should hear such cases. After a good deal of consideration, the fairest way seemed to be to provide that the Interstate Commerce Commission should appoint a board of auditors. I called them "auditors." It is suggested with some basis that that is another evidence of my New England sectionalism. Somebody said that down here an "auditor" was nothing but an accountant; up with us in Massachusetts, he is a quasi court appointed by a court to hear a case which is so long or detailed that the court does not want, or ought not, to hear it. In recent years, auditors have performed on the law side of our court, and occasionally on the equity side, almost as important a function as special masters have performed on the equity side of the court. But if anybody objects to New England sectionalism or the use of the word "auditors," I am ready to compromise on the use of word "referee." It may be more understandable outside of my own section.

Without stopping for mere words, the provision is that the Interstate Commerce Commission shall appoint a board of three auditors, or referees, who shall hear these cases and make reports thereon. Members of the board and of our official forces are made eligible. Someone asked me, to my surprise, why others ought not to be eligible. If you will read with care, you will see that the only thing which is done in line 12, *et sequitur*—which reads as follows:

Members of which [that is, of the Interstate Commerce Commission] and of the official force thereof being eligible for service on said boards, but without additional compensation therefor,

is to remove an ineligibility which would probably arise out of the fact that we are to be the appointing tribunal. I apprehend that there would be no question if any railroad with any real reason for preferring an outside lawyer, or an outside engineer or accountant in having a part or perhaps all of this board constituted from without. But it would manifestly be waste of official forces now being paid out of the Government's treasury, conversant with railroad facts (a large number of our people being connected with the valuation division) if, on one of the cases, the services, without extra pay from the Government or from anybody else, of men perfectly competent and disinterested, should not be availed of.

Probably section 3 will require a perfecting amendment providing that these referees shall be empowered to summon witnesses, administer oaths, call for the production of papers, and utilize the

records of the Interstate Commerce Commission as evidence. That is a matter we will take up later, and I won't trouble you now with the details of it. It is legal machinery on which there is no probable difference of opinion.

These referees shall give a hearing to each carrier and to the United States, report to the President the amount due such carrier as just compensation, a sum not exceeding the amount so reported, may be agreed upon by the President and such carrier.

That furnishes another trading basis. If you look at the very end of the section you will see that all the carriers which are taken over, that do not make returns to the Interstate Commerce Commission—(and I think there are some such that are taken under the war power, i. e., that are entirely intrastate)—are left to be settled here. We can think of no better way for fixing a trading basis between the President and the owners, than to have a tribunal so constituted hear the case, make a report of the facts; and then the report so made may constitute a trading basis, precisely as the three year net earnings "the standard return" under section one, constitutes a basis for trading with the larger carriers, all of which, of course, make returns to the Interstate Commerce Commission.

Our belief is that 49 out of 50 cases will be disposed of either under section 1, or under the first part of section 3. But, if they do not agree, then due process of law remits them to the Court of Claims; the report of these referees is there made *prima facie*, leaving either the Government or the carrier to upset it if they can.

It is manifest that these carriers must have additions and improvements to their property, in many instances properly chargeable to capital account. It is manifestly desirable that so far as they have surplus out of their standard return, or if financial conditions are such that they care to do their own financing rather than have money advanced by the United States, they should be permitted to do such financing; or at any rate that the power should be given to the President to approve additions to be paid for by the carrier; and that if they do put their own money in, they ought to get a fair return on it in addition to the flat rental basis under the trade made for their property, in the condition that it was when the Federal control began. Otherwise, they themselves would pay for no building and that would put an unnecessary burden on the Government. It is also manifest that if the Government finances any such carrier, as to the whole or any part of any such additions or improvements, that the flat rental should be increased only by the amount of interest that accrues to the Government on its advances to the carrier for such purposes.

We think, therefore, that under sections 1 and 3, we have provided adequate and easily available and speedy and inexpensive machinery for the determination of all just claims of all carriers against the Federal Government.

I can pass on now more rapidly.

Section 4 deals with the changing of the standard or ascertained return ("standard return" means the three-year average fixed under section 1, and "ascertained return" means the ascertained amount under section 3), by increasing that return by 6 per cent upon any additions or improvements made to any property while under Federal

control with the approval of the President, and by an amount equal to the rate which shall accrue to the United States upon any advances made to such carrier, for the cost of any additions which are paid for in whole or in part by advances made by the United States. That provision must be read in connection with section 6. It is not 6 per cent, it is changed to a percentage to be fixed by the President. I think 6 per cent was discussed at one time, but it seemed better to have it made more flexible.

Section 5 is a financial stabilizing section. It provides that no carrier while under Federal control shall, without the prior approval of the President pay or declare any dividend in excess of its regular dividends during the three years ending June 30, 1917. That is intended obviously to keep the income accruing from standard returns distributed in the regular way that it has hitherto been distributed. It is not desirable that simply because there may accrue to some carriers a standard return substantially in excess of its regular dividends, that you should open the door to speculation and stock kiting by allowing a board of directors (and sometimes you get irresponsible boards of directors), to pay out every dollar of it in dividends, and profit out of such manipulations of the stock market as are generally incident to such excess and extra dividends.

Senator UNDERWOOD. Let me ask you a question right there. The excess profits that go into the railroad company's treasury, if this bill is adopted, will come entirely from the amount that the Government pays them, will it not?

Mr. ANDERSON. Yes.

Senator UNDERWOOD. This bill does not propose to take over the machinery of the corporation itself, but merely its property.

Mr. ANDERSON. I should not think that would be quite accurate.

Senator UNDERWOOD. Well, does it propose to take the branches and the working of the stock away from the stockholders?

Commissioner ANDERSON. No.

Senator UNDERWOOD. Or the power of the directors to dispose of property that is not used by the Government?

Commissioner ANDERSON. No; I should think not; but I should think that it would not be quite as broadly stated as you state it.

Senator UNDERWOOD. Well, suppose, to make it clear, the Baltimore & Ohio owns a lot down here that used to be a railroad piece of property, but since the change of the depot is not available for that purpose. There is nothing in this bill that will prevent the directors of that road from disposing of that lot and handling the situation?

Commissioner ANDERSON. No.

Senator UNDERWOOD. Now, I ask this for my information. I am not combating the purpose that you have in mind, but I want to see we are on safe ground in arriving at it. The Government pays, if they make the compromise with these railroads or it is fixed by the court, a certain rental value into the treasury of the corporation. When that rental value goes into the treasury of that corporation, under what power has the Congress to say to the stockholders and owners of that road that we put a limitation on the disposition of your own property?

Mr. ANDERSON. I think that lies clearly under the war power; and I rather think you have it under the commerce clause.

Senator UNDERWOOD. Have we? Under the war power—I am not talking about the tracks and engines and cars, a part of their property the Government is using for war power; but I am talking about that part of the property the Government is not using and does not propose to use itself at all, either corner lots, or cash in hand. How does that relate to the war power?

Commissioner ANDERSON. Well, those last things relate to the war power, but remotely. I had a discussion the other day with a man who is probably a good deal better lawyer than I am—at least I concede it—as to this situation which you will face a little later in the discussion of this bill, when you come to the proposition of financing these carriers by the Government. We have a carrier here, the Baltimore & Ohio, and the New Haven—that is the instance which looms largest in my mind—where you have a mass of carrier property (we will say, for illustration, \$250,000,000) which is going to be utilized under this power of control by the Federal Government, and you have got \$200,000,000 more of property which is not going to be so used; but you also have \$450,000,000 of capitalization, a good share of it debts, and when those debts mature they must be paid; the interest must also be met pending maturity, or there is financial trouble affecting your war situation. There is a provision in sections 6 and 7 of this bill for the Government taking care of such maturities.

Now, I put this proposition to some of my associates. I said, “Suppose you find a board of directors with a large outstanding debt incurred by buying noncarrier properties, and misusing the noncarrier property or the income from the noncarrier property so as to create financial burdens which will have to be financed by the Government during the period of the war control, what power has the Government under the Federal control to deal with those noncarrier operations?”

Senator UNDERWOOD. I can readily understand how the Government in paying its rental can make a provision that the rental must be first applied to pay the outstanding interest on the bonds or other indebtedness of the road before it can go in an unlimited way into the treasury of the corporation, but I do not understand, after the Government has turned into the treasury a surplus amount of money without control, how it can reach in there under the war power or the interstate commerce power either, and dictate to the stockholder what he shall do with his own money.

Mr. ANDERSON. Or dictate to the directors as to the dividends to declare.

Senator UNDERWOOD. Not if it is free money.

Commissioner ANDERSON. But it is not free money.

Senator UNDERWOOD. This bill makes it free. There is nothing in this bill. I think we could put a provision in this bill legitimately that would provide that out of the rental a sufficient part should be set aside to pay the interests and debts, before it went into the general treasury, or the Government should see that it was paid, the Government officers should apply it for that purpose. But the bill does not put that limitation on it. The bill turns into the treasury of the railroad the amount of this rental as free money, and if it is free money, I don't know of any power of the Government that can dictate to the stockholders what they shall do with their money.

Mr. ANDERSON. I don't think I should be willing to agree that under this bill the rental turned into the treasury is free money. If the carrier settles with the President under section 1 and takes the rental therein provided, it takes that money with all the obligations and restrictions which are provided in the rest of the bill, which grants the power of that settlement, in my view. If a carrier cuts loose from everything in the bill, or undertakes to cut loose, and goes into a court and says it will take its constitutional rights and get just compensation and collects on a judgment, then there might be something to be said in favor of the proposition of free money as to the results of such judgment.

Senator UNDERWOOD. Of course, I recognize if the carrier makes a contract with the Government, outside of going into the courts, that of course that contract is binding on the carrier, whatever it may be; but of course the basis of that contract is the right that he holds to go into the courts, and I should think the bill should be drawn from that standpoint of his initial right under the law and under the Constitution, and if he does go into the courts and fixes his status for a rental charge, it seems to me, we can only pursue the money we paid him for the rental charge, to the extent that the war power of the Government will allow us to. I don't think it is a very material question, but I think it is one that ought to be considered, and that is the reason I asked you the question, because I wanted you to throw what light you could on it for my own benefit.

Commissioner ANDERSON. I may venture the statement, that no railroad lawyer with whom I have discussed the bill—and I have drawn such fire as I could (it was not a responsibility that I yearned for, to bring in a bill which had not been subject to such fire)—have suggested that section 5 is unconstitutional. I think this is the first time that suggestion has been made concerning this bill; and it has been scrutinized by a great deal better lawyers than I am.

Senator UNDERWOOD. Well, possibly some man who don't know law has read the constitution.

Commissioner ANDERSON. It was Daniel Webster who inquired what an "unconstitutional lawyer" was after various gentlemen had been described as great constitutional lawyers. Perhaps we need a few now. However, we shall be glad to take that up again. I shall put that up to some of my learned associates down there that I try out things on, telling them that question has been raised. We do not know what will happen from the carriers if that suggestion carries in the committee.

But to come back to the first part of section 5, you will observe the words "with the prior approval of the President." That is put in on the theory that there are some corporations paying regular dividends, that have been perhaps very conservative, that if the purchasing power of money continues to diminish it may be consistent with the public interest, perhaps with the stockholders' rights, that the previous regular dividends may be increased moderately.

You can easily understand that an argument might be made that the Pennsylvania, which paid 6 per cent last year, and I think put away as much as surplus—should increase its dividend to 7 per cent. Stock of a common carrier properly financed and managed ought to be kept at par, or better, in a wholesome and unpanicky market; and such dividends as are necessary in wholesome and unpanicky condi-

tions to keep the stock of the carrier at par, ought to be paid. It is intended to give that power. I think the New York Central paid 5; I think their regular dividend is 5. I can easily understand why an argument should be made that they should go to 6 per cent. I do not prejudge any question of that sort, but merely use those illustrations.

We have some carriers who have not paid any dividends or any regular dividends. It is consistent with the public interest that irregular dividend payers should, if the standard return warrants it, be made regular dividend payers, and thus put on a good sound market basis. The latter part of the section provides for that—"pay dividends at such rate as the President may determine."

Passing then to section 6, which is another vitally important section—it is manifest that in addition to there being power to settle with the carriers by voluntary agreement on basis obtained from their previous returns, or by the adjudication of impartial tribunals—or in the case of nonagreement by the court, and in addition to the control within proper limitations of the distribution of that income—that it is necessary to provide for additional equipment, probably some additions to the tracks and other transportation facilities, as well as for maturities.

Section 6 provides for the appropriation of \$500,000,000 from—any funds not otherwise appropriated, which, together with any funds available from any excess earnings of said carriers, may be used by the President as a revolving fund, for the purpose of paying the expenses of the Federal control, and any deficit of any carrier below such standard or ascertained return, and to provide terminals, improvements, engines, rolling stock, and other necessary equipment, such as terminals, improvements, and equipment to be used and accounted for as the President may direct, and to be disposed of as Congress may hereafter provide.

I suppose the first question that you are asking is as to why \$500,000,000 was named. The Director General will take the chief responsibility of explaining that. I drew the bill blank, and he filled it in. He will explain it. I will, however, give you certain figures which were before him at the time when he reached his conclusions.

The maturities for the years 1918 and 1919 figured out now are pretty close to \$450,000,000. The amount put by the carriers into additional equipment on capital account during the two years 1915 and 1916 is about \$200,000,000. I call your especial attention to that, because wide publicity was given a few days ago to a statement to the effect that it required \$500,000,000 a year at present prices, to take care of the ordinary quota for additional equipment. As a matter of fact, the expenditures by the carriers for additional equipment, as shown by our returns, and reported to me by the bureau of statistics was, for the year ending June 30, 1915, \$117,912,235. That is class 1 carriers. Take the next year, it was \$175,742,935.

But a good share of those are for renewals, leaving net addition to the investment for equipment of class 1 carriers, a little under \$62,000,000, for the year ending June 30, 1915, and for the next year of \$116,500,000. Increasing that by the percentage necessary to take in all carriers, you have about \$69,000,000 in 1915, and \$130,000,000 in 1916, or in round figures, \$200,000,000 for the two years. Probably it will be stated, and perhaps accurately, that there was an

undersupply and not an oversupply of equipment during those two years. But you may carry in your minds, that in the years 1915 and 1916, the carriers put a couple of hundred millions on capital account into equipment; and that for the years 1918 and 1919, the maturities are about \$450,000,000.

Senator UNDERWOOD. Will you explain what you mean by maturities there?

Commissioner ANDERSON. The maturities are bonds which fall due and notes which fall due during the calendar years of 1918 and 1919.

Senator UNDERWOOD. That is, where the principal falls due?

Commissioner ANDERSON. Yes.

Senator UNDERWOOD. How has that been taken care of in the past?

Commissioner ANDERSON. By the carriers themselves by reissuing bonds and short-time notes, which latter have been very, very expensive in the last few years.

The CHAIRMAN. That \$450,000,000 applies to class 1. Are you addressing yourself just to class 1?

Commissioner ANDERSON. As I understand the figures given to me, it covers them all. I think it is a little under \$450,000,000, but you see those items have to be figured out; they are not a part of the summarized returns to us. They originally gave net figures of about \$350,000,000, which I said must be too small; returns were given the other day which I understand are authentic, and I also understand the Bureau of Railroad Economics has verified them. Isn't that right, Mr. Patterson?

Mr. PATTERSON. My understanding is that it approximates in these two years \$450,000,000.

Commissioner ANDERSON. Yes; I saw figures in detail, which I think came from that bureau.

This phrase "revolving fund" I derive from the Lever bill. I would not dare to use it if I had not found a precedent in your legislation.

The excess earnings, if there are any, go into that fund, and it may be used over and over again.

You will observe at the top of page 5 that terminals have been put in the same category as engines and rolling stock and improvements. That was thought to be necessary because of alleged inadequacy in some quarters of terminals. Generally speaking, the power therein granted refers to rolling stock and equipment.

You will observe this equipment is to be used and accounted for as the President may direct. Hitherto the rolling stock used on the lines of the various carriers not belonging to them has been charged on some basis of mileage, per diem, or other method, for the purpose of having an accurate determination of what was actually earned net by each carrier.

The Pullman Co. has furnished cars in various contractual ways to nearly all the chief carriers. It is the view of us who worked at this bill that during Federal control there should be accurate and complete bookkeeping; that it is not desirable that the Government freight and troops should be carried without charge, as I understand has been the situation in England; nor that Government equipment should be used on the lines without charging it in as a part of the operating expenses. Otherwise, when Federal control ends, if it does

end (and I venture no prophecy and express no views one way or the other), you have no reflection in your accounts as to what business has been done under unified control on the various lines.

Of course, this argument may be made in favor of simplicity, that the Government takes any profit and pays any deficit; and that if the Government puts two or three hundred millions into rolling stock and carries free of charge its troops and munitions, the result is the same whether books are kept or not. But our view is that the great weight of argument is in favor of having an accurate reflection of what is done on the lines of the different carriers. This may be used for many purposes during Federal control; many purposes may be thought of, for which such reflection may be desirable or useful when the war is over, to guide you as to the legislation which you will have to enact. Whether that legislation be the most conservative kind or the most radical kind, you want to know what has been done, during Federal control, in my opinion.

Somebody asked what is to be done with this rolling stock. I don't know. The bill provides that it be disposed of as Congress may hereafter direct. After much discussion as to what should be done with the rolling stock, we came to the conclusion that it was utterly impossible to contemplate Federal control during the period of the war, or for any reasonable period thereafter, without having a status created with which Congress must deal; and that it was much better that it should then deal with the ownership of this rolling stock and its proper relation to the carrier system or systems, rather than to undertake now to hazard some wild guess, which would have 99 chances in 100 of being wrong.

Senator UNDERWOOD. Before you get off that clause, I would like to ask you something about this revolving fund. As I understand you to say, the maturities amount to about four hundred million.

Commissioner ANDERSON. Four hundred and fifty millions.

Senator UNDERWOOD. Well, of course, if those were paid out of this fund, there would be no revolving fund there. They would never come back into the possession of the Director General.

Commissioner ANDERSON. That does not follow, as you will see at the end of section 7.

Senator UNDERWOOD. Please explain that.

Commissioner ANDERSON. It is in section 7, and I will come to it in a moment or I will take it up now if you wish.

Senator UNDERWOOD. I wanted an idea as to where this money was going and what was to be the disposition of it.

Commissioner ANDERSON. Assume, for the purposes of our present illustration, that you have two years of Federal control and five hundred millions appropriated. You may or may not need two hundred millions for additional equipment. Probably you will, though we can not tell what economies it will be possible to work out by stopping cross hauling, and by unified control. A hundred millions may probably go into equipment which the Government will own.

Senator UNDERWOOD. There would be no revolving fund there until Congress disposes of it.

Commissioner ANDERSON. There might. An income would come in from that \$100,000,000 for equipment, which would be used on the lines of the various carriers, and be charged to them, precisely as the Pullman cars are charged to the carriers. So that that

\$100,000,000 worth of equipment would be earning money, by charges to the operating expenses of the various carriers.

Senator UNDERWOOD. That would come back to them as an earning item, and not an item of original capitalization.

Commissioner ANDERSON. That is true.

Senator UNDERWOOD. Therefore, it would not be a part of this particular fund; it would go in with the other earnings, in the same class with the other earnings of the railroad.

Commissioner ANDERSON. It would come back to the revolving fund. Supposing the carriers continue to run as they are now running and you have \$100,000,000 profit; that goes into the revolving fund.

Senator UNDERWOOD. And does that in the terms of this bill go in there?

Commissioner ANDERSON. Yes.

Senator UNDERWOOD. I am asking a question for information. I am not familiar enough with the bill, although I have read it many times; but I have not the bill sufficiently in my head to get all the angles that it may lead to, and I want to know if there was a provision in the bill that this additional surplus amount above the rental value goes into this revolving fund or goes into the treasury?

Commissioner ANDERSON. It goes into the revolving fund under what I just read a moment ago. It is in line—

Senator UNDERWOOD. Doesn't that provide that it should go to the United States?

Commissioner ANDERSON. It does, but it goes into this fund. You will find it in line 24, at the bottom of page 4. If you look at page 2, lines 10, 11, and 12, you will find "any net railway operating income in excess of such standard return shall be the property of the United States."

If you look, then, at lines 23 and 24, on page 4, you will find that the appropriation, "together with any funds available from any excess earnings of said carriers, may be used by the President as a revolving fund," and so on, first paying the expenses of the Federal control; second, any deficit. Some carriers may have a deficit. There may be a deficit as to all, as far as we know. If so, it will draw on the appropriation. If there is an excess of earnings, it adds to the \$500,000,000; if a loss, it reduces it. The increase or the diminution by the excess or deficit plus the appropriation constitutes the revolving fund out of which expenses are to be paid, the new rolling stock to be furnished, as provided in the first part at the top of page 5, and out of which also, as provided later in section 7, maturities are to be paid. Only one fund is provided for.

Senator CUMMINS. And the President is given authority to sell the securities and the proceeds of any such sale.

Commissioner ANDERSON. Precisely. We contemplate one fund, into which and out of which would come and go the result of all the transactions of the Federal Government in connection with Federal control.

Suppose you start with your \$500,000,000 fund. That may be increased by excess earnings; it may be increased by interest upon securities, which are bought under the latter part of section 7, or rather its depletion for the purchase of such securities, would be in part made up by interest accruing; it may be increased by a sale of a

part of those securities. It may be increased by earnings derived from the use of the equipment and the terminals provided for in lines 4, 5, and 6, at the top of page 5. It may be diminished by expenses, and it may be diminished by deficits accruing from the operation. It will, of course, as an investment fund, be diminished by the cost of the rolling stock and equipment furnished and by the cost of the securities purchased under section 7. There may be other ins and outs and that for the moment I have overlooked them.

Senator UNDERWOOD. Now, is it contemplated in the bill that the maturities and the securities of the railroad that mature within the life of this bill will have to be carried by the Government instead of by the railroad companies?

Commissioner ANDERSON. It is provided near the end of section 7 that the President may purchase all or any part of the securities issued for such maturities, and may sell such maturities whenever in his judgment it is desirable, at prices not less than the cost thereof.

Senator GORE. That is, renewals issued by the railroads to take up outstanding bonds?

Commissioner ANDERSON. Yes, and also for other legal and proper expenditures. For instance, it may be desirable, if you want a branch line built down to a cantonment or shipyard, to say to a carrier, "You build that branch, issue your own securities in such form as the President approves, and we will buy those securities; for at the present time we do not want you in the market, and put them into the Treasury." That keeps the property title clean. It is the carrier's property. You have not mixed up real estate holdings between your carrier corporation and the United States. There is also a provision that if they do that sort of thing under order—making additions and improvements for war purposes, which may not be worth what they cost, although built by and charged to the carrier and constituting a part of its property—that the loss thus accruing may be determined under the provisions of section 3.

Under the war power, you may tell a carrier to put tracks down to a cantonment where there won't be any traffic when peace comes. The tracks are worth more to the carrier than to the Government or to anybody else, and the carrier should be left to deal with them; but their loss in complying with the Government order should be charged back to the Government, and they should be reimbursed therefor. That is provided in the latter part of page 5.

Senator GORE. Haven't a good many of these railroads provided sinking funds against the maturity of these bonds?

Commissioner ANDERSON. I should say not a great many. I should expect to find very few sinking funds constituting any considerable factor in a proposed refunding.

Senator GORE. Have you arrived by that by statistics? Have you obtained statistics on that?

Commissioner ANDERSON. The sinking fund figures can be obtained; I do not think of any except certain equipment trusts. Equipment trusts, I think have, with most of the carriers, a sinking fund. Isn't that so, Mr. Patterson?

Mr. PATTERSON. That is the usual practice.

Commissioner ANDERSON. Yes; and it is not a usual practice as related to any other financial transaction?

Mr. PATTERSON. No, sir.

Commissioner ANDERSON. That is my understanding of it. In the middle of page 5 it is provided that "the President may also on or in connection with the property of any carrier, make or order any carrier to make any additions and improvements necessary or desirable for war purposes, or in the public interest."

I have already said something about that provision. There was discussion as to whether the Government should not itself make such additions and own the property. After discussion it seemed to us it would involve the title of the properties, which were either on the carrier property or in connection with it, in inextricable confusion; that while the Government might well enough go into the business of owning rolling stock to be used generally, and of owning here and there a terminal, it was not desirable that it own here and there scattered addenda to the tracks and yards and other facilities of the carrier properties.

Senator CUMMINS. Mr. Anderson, that point has attracted my attention, and I would be very glad to have your opinion on it, on this point at this time. We all recognize that if a man has a house the Government can take it for war purposes, making him just compensation for it, but could the Government compel a man to build a house in order that it might use it?

Commissioner ANDERSON. I don't know what the limits of the war power are. I am not sure that it could not.

Senator CUMMINS. Isn't this an exactly parallel instance?

Commissioner ANDERSON. No; I do not think so. I think the relation of the Government to its public agencies—and the Supreme Court over and over again has used that phrase in referring to the railroads—is different from the relation of the Government to the ordinary private citizen and his house. I can not believe that, when we have a road system, for that is all it is, a highway system, in which corporations having bodies of security holders are a piece of the Government machinery (or a public agency, to use the Supreme Court phrase) that there can be the remotest doubt of the authority of the Federal Government to order such corporation to build a road. I think it has been ruled over and again that they can order them to build a road or an extension or a station. We have such cases up in Massachusetts right along, requiring our trolley companies to build stations and to run trains, etc.

Senator UNDERWOOD. That is under the commerce power and not under the war power.

Commissioner ANDERSON. We have both war and commerce here. Certainly the right is not less under the war power.

Senator CUMMINS. You have expressed the opinion that the road may be compelled to construct or put in these additions for war purposes.

Commissioner ANDERSON. Or in the public interest.

Senator CUMMINS. I have no doubt within reasonable limits that under the power to regulate commerce in peace times something that would accommodate the commerce of the country, that the road could be compelled to make its facilities adequate. But as part of the war power and for a thing not required in commerce, but simply to carry out the war, can the Government say to any man or any company

that you shall construct and turn over to the Government any building or any structure whatever?

Commissioner ANDERSON. I think you can say to a public highway company and a railroad company is that, that you must build any addition, station, or other public facility that we require. Of course, when you come to deal with the financial results of such order, you can not confiscate private property; and if you thereby cause a loss to that public agency which encroaches upon the rights of the security holders not to have their property taken away from them they are entitled to reimbursement. But I have no doubt of the power.

Senator CUMMINS. Suppose the corporation says: "I have not the money to build it with and I can not build it without money." Could you still compel the corporation to build it?

Commissioner ANDERSON. Well, you can not compel an impossibility, and this bill does not contemplate that, for it contains an express provision that the Government may finance; the bill is framed upon the theory that the Government is to provide the necessary financing of the carriers during the period of war control, and is to reimburse them for any loss which accrues out of doing anything under Government order.

Senator CUMMINS. Then ought there not to be in the bill a provision that if the company has no money with which to build or construct the property that the President shall take its securities instead of "may take its securities"?

Commissioner ANDERSON. Well, the implication is so strong, and the impossibility of the President performing his constitutional duties by trying to compel a corporation to do an impossible thing, seemed to be so remote that I did not think it would be necessary to put "shall" in. It seemed to me to be safer as it is. The power will be used fairly and considerately; I expect in every case that it will be used cooperatively as between the common carrier corporation and the President.

Senator CUMMINS. I was only looking at it from the standpoint of the validity of the power and not with regard to its exercise, which I have no doubt would be very wise and considerate.

Commissioner ANDERSON. I will look and see whether there have not been cases in which public service corporations have been required by the courts to make extensions, and I will send you the citation if you desire.

Senator CUMMINS. I think there are cases of that kind.

Commissioner ANDERSON. I think so.

Senator CUMMINS. And I have no doubt of the principle upon which they are founded. The thought in my mind was, and the question was, whether that principle extended to furnishing the Government's facilities for war purposes purely.

Commissioner ANDERSON. Well, I think it lies under the commerce and war—both. You can not conceive of adequate regulation of a carrier if there is not power to tell them to spend money for various things—to put on safety appliances, to use headlights, to do all kinds of things, which cost large sums of money, such as eliminating grade crossings and building stations. It is only a question of degree; it is not a question of kind when you say, "Run a track down to that shipping yard." Or I can not see any difference in the nature of the power exercised, in the essential relations between that

public agency and the Government, whether it is the building of a 10-mile branch necessary for the public convenience or whether it is eliminating a grade crossing.

Senator CUMMINS. Well, there is this difference, Mr. Anderson, that occurs to me. When a corporation is compelled to enlarge its property for the movement of commerce, it has a right, of course, to collect from those who use the property as a whole an adequate return upon it.

Commissioner ANDERSON. Yes.

Senator CUMMINS. And the rates must be adjusted accordingly. Now, do you think you could compel a railroad company to reconstruct its property, and then compel the shippers of the country, those who pay the freight, to bear the burden of that purely war purpose?

Commissioner ANDERSON. Well, that may be a question of taxation—I have given little consideration to it. I do not know any limits to the taxing power for war purposes. I do not know any reason why you should not use your railroads for taxing purposes if you wish to; I do not say you ought to. Some European countries have used their railroads largely as a means of indirect taxation. You may cause a deficit and pay out of your standard taxation; you may run your railroads so as to pay a surplus into your treasury, just as you may your post office. I do not see that there is any essential difference in our relations to these railroads and to the post office so far as that question is concerned.

Senator CUMMINS. I was not saying as between public and private ownership, but I think there is some difference of the power of the Government in its ownership and the power of the Government over a private corporation.

Commissioner ANDERSON. Possibly, but my notion is you can do anything with a railroad, except confiscate it; that you can not do as long as we have our present Constitution. I think you can do anything except confiscate the property which is devoted to this kind of public service. You may provide that it shall be used here, there, or in any manner that you think is in the public interest; but you can not take it away from the owners without paying just compensation for it.

Then it is provided, in the middle of page 5, that the President may, from the revolving fund advance to the carrier any part of the expense of such additions and improvements so ordered and constructed by such carrier, or by the President, such advances to be charged against such carrier and to bear interest at such rate and be payable upon such terms as may be determined by the President, to the end that the United States may be fully reimbursed for any sums so advanced.

We had originally in one draft, that it should be charged at 4 per cent. But nobody knows what the Government rate will be before the war was over, so that point was left to be determined by the President.

Our idea was that money would be advanced to the carrier at what it cost the Government, and charged at that rate. This interest would be added to the return, as provided in section four; one hand would thus wash the other. Thus you have your bookkeeping accurate; and the property, thus created, belongs to the carrier. If the property

has cost more than it is worth for carrier purposes, any loss claimed to have so accrued may be determined by agreement between the President and the carrier; "failing such agreement the amount of such loss shall be ascertained as provided in section three hereof." The referees will hear the case, make a report, and the President may then settle with the carrier on the basis of the report; if not satisfied with the report, either side can go into the Court of Claims and have due process of law.

At the top of page 6 is an addendum dealing with water facilities. From the revolving fund the President may expend such an amount as he may deem necessary or desirable for the purchase, construction, or utilization and operation of boats, barges, tugs, and other transportation facilities of the inland and coastwise waterways, and may in the acquisition, operation, and use of such facilities create or employ such agencies and enter into such contracts and agreements as he shall deem in the public interest.

The words, "employ such agencies," has reference to the possibility of utilizing the present Shipping Board, or whatever shipping facilities we have; this you know more than I. It was also suggested by one House Member that there ought to be express power given in section 3 for the purchase and construction of canals, that if there be any doubt as to a canal being an inland waterway, canal should be inserted after "inland" in line 5, on page 6.

We have no objection to the enlargement of the power so as to include the purchase, construction, and operation of canals if they may be found of avail in these times.

Senator CUMMINS. Well, it is now limited to the facilities of transportation on waterways. Is it the suggestion that it be enlarged to purchase the waterway itself; that is, the Government shall become the owner of the improvement?

Commissioner ANDERSON. Well, it is suggested by Mr. Moore of the House that there ought to be power to purchase and construct canals, that he thought that there were some canals that could be bought and widened and deepened, or both, and be very valuable to the Government. Of the facts I have no knowledge. We see no objection to granting the power if Congress sees fit to grant it, leaving the President to use as he deems desirable.

Senator CUMMINS. The power to purchase a canal, except in degree, and the power to purchase a railroad, are the same?

Commissioner ANDERSON. Well, it is the same in kind but it is very different in degree. There are not many big canals in this country. The Erie is the only one that I know of which compares in size with the railroad systems—

Senator CUMMINS. I know of two or three others.

Commissioner ANDERSON. Oh, there are others, but I mean of any size.

Senator KELLOGG. Do you think we should give the President power to purchase canals at his discretion?

Commissioner ANDERSON. Well, I limited myself to saying we had no objection to it. I do not know how I should feel about it if I were a Member of the Congress, or whether I should want to grant a blanket power of that kind, without knowing how it was to be exercised, and what particular pieces of property might be bought. I should not expect it to be abused, but I do not think as a broad

proposition the fact that you do not think that an official power will be abused by any particular individual is a sufficient reason for granting it unless there is a need for it. I think there is a canal that I have heard spoken of as "Chesapeake & Delaware," that it is said ought to be utilized for war purposes, and ought to be bought by the Government and operated by the Government. The Cape Cod Canal is, I think, ambitious to be acquired by the Government.

Senator CUMMINS. We have two or three out our way that the owners at least would be very glad to find a purchaser for.

Commissioner ANDERSON. You undoubtedly know a great deal more about those canals than I do. But if there are any that ought to be utilized for war purposes, all I say is that we have no objection to granting the power.

Senator KELLOGG. You can utilize them without granting that power of purchase, can you not?

Commissioner ANDERSON. It might be a question as to whether you can utilize them without enlarging some of them. The Cape Cod Canal is a pretty important cut-off. I do not want to divert to a merely local matter. That cut-off has been under consideration since colonial times. The tide goes through there like a race horse at a rate of about 8 miles an hour, and I wonder they get a steamer safely through. But they do. But it cuts off that dangerous cape, and if we were in a serious naval conflict on this side, as they are on the other side, to have that Cape Cod Canal so that war vessels could go through there, would be a matter of enormous national importance.

Senator CUMMINS. But so far as any changes are concerned or enlargements, they are fully taken care of in the latter part of section 6, are they not?

Commissioner ANDERSON. Well, I think that the feeling in the House Committee was that the language that "the President may expend such an amount as he may deem necessary or desirable for the purchase, construction, or utilization and operations of boats, barges, tugs, and other transportation facilities on the inland and coastwise waterways"—that the enumeration of "boats, barges, tugs, and other transportation facilities" had limited it to means of carriage; that you could not improve the waterway or purchase or construct one.

Senator CUMMINS. I was referring to that part of section 6, which provides that "the President may also, on or in connection with the property of any carrier, make or order any carrier to make any additions and improvements necessary or desirable for war purposes, or in the public interest."

Commissioner ANDERSON. I don't believe that a canal is a carrier within the meaning of that phrase. There may be an arguable doubt as to whether the canal is a carrier at all. The language of the August, 1916, act is that the President may take over all or any part of "systems of transportation." Now, for the purposes of this act, we refer to the fact that the President has taken over certain systems of transportation called herein "carriers." Whether a canal is or is not a system of transportation within the meaning of the existing statute, I should suppose would be open to some question. It is a water highway.

Senator POMERENE. So are two streaks of iron, a highway. That is, if the company owns a canal and owns the boats.

Commissioner ANDERSON. Then you have a system. Suppose you own the canal and do not own any boats. Is it a system?

Senator POMERENE. I do not know.

Commissioner ANDERSON. Well, I do not.

Senator TOWNSEND. Suppose we have this in mind, Mr. Anderson: We have a waterway on the line between Canada and the United States, a part of the way it is within the United States and a part of the way in Canada and a part of the way on the line, and it was thought best to develop that waterway for ocean carriers. Is there any power in this bill conferred upon the President to do that?

Commissioner ANDERSON. Why wouldn't that be an inland waterway?

Senator TOWNSEND. Part of it would, undoubtedly, although it is one continuous course. It has seemed to me as though that was one of the most essential things that could be considered at this time, especially if we are to have three or four years of war, to have that waterway opened up.

Commissioner ANDERSON. Just where is it?

Senator TOWNSEND. Well, it is called the St. Lawrence-Great Lakes Route. The Great Lakes-St. Lawrence Route. There is the Welland Canal, and we have the canals in the United States connecting it with St. Clair, the St. Clair Flats, the Livingstone Canal, down through Lake Huron, Lake Erie, and that continuous out to the ocean through the St. Lawrence.

Commissioner ANDERSON. I should not suppose that there would be any danger of abuse, even though there are some canals of not great public moment that are desirous of being purchased, if you put in the end of line 3, on page 6, the word "canals," and also in line 5, after the word "inland." You would then have this language:

From said revolving fund the President may expend such an amount as he may deem necessary or desirable for the purchase, construction, or utilization and operation of canals, boats, barges, tugs, and other transportation facilities on the inland canals and coastwise waterways, and may in the acquisition, operation, and use of such facilities create or employ such agencies.

And so on. That would open the door to the purchase of the Cape Cod Canal, the Chesapeake & Delaware Canal, and any of these other canals. If such power is granted, whether it ought to be more narrowly limited I have no suggestion to make.

I pass to section 7:

That for the purpose of providing funds requisite for maturing obligations or for other legal and proper expenditures, or for reorganizing railroads in receivership, carriers may, during the period of Federal control, issue such bonds, notes, equipment short certificates, short and other forms of securities, secured or unsecured by mortgage, as the President may approve as consistent with the public interest.

That you will see is broad enough to cover the form of securities, the rate of interest, and all other details. Obviously, if the President is to exercise, as he probably would have to exercise (for this is a power almost certain to be largely exercised, and not like the power of buying a canal, one rather remote, as I should suppose),

the form of the securities must be dealt with by the governmental power, which uses the taxpayers' money in buying them. [Reading:]

The President for the United States all or any part of such securities at prices not exceeding par and may sell such securities whenever in his judgment it is desirable at prices not less than the cost thereof; any sums available from the revolving fund provided in section 6 may be used for such purchases.

That speaks for itself and is intended to provide against the carriers being thrown into any financial embarrassment to their own or to the general public's detriment by reason of maturities falling due within the period of war control. The rest of the bill I think I may go through rather rapidly.

Senator UNDERWOOD. Let me ask you a question about the purchase of these securities. Did you consider the question of establishing a moratorium on those securities during the period of the war?

Commissioner ANDERSON. Yes, sir.

Senator UNDERWOOD. What was your conclusion in reference to that?

Commissioner ANDERSON. I think that it would have a disturbing effect on the security market. There are many people who are frightened if they can not get their money, even if they do not want it; and if they do want it and can not get it, they are panic stricken. There is nothing so ticklish and scary as the money market. For the Government to take part of such bonds, or all of them, we thought would have on the whole a far more stabilizing effect on general market conditions than to declare a moratorium.

Senator UNDERWOOD. Then your viewpoint was addressed more to the general security market than it was to the particular securities you have in hand?

Commissioner ANDERSON. Well, I don't know as I would say that. We thought the two things went hand in hand. This is a great war measure; justice must be done to the corporations and to their security holders; the public interest must be conserved and advanced in every practical way, including the maintenance of sound investment conditions, so that if the Government offers more of its own bonds there will be available money for them. There will be some patriotic people who hold railroad securities who might want to sell them and put their money into the Government bonds.

Senator UNDERWOOD. That would not help the Government in taking it out of one pocket and putting it in another.

Commissioner ANDERSON. That is quite true, sir; but suppose you succeeded in stabilizing your railroad securities so that patriotic people become more ready to sell their railroad securities and put money into 4 per cent Government bonds. I had to sell out in October, in order to qualify for this office, railroad securities on a 10 per cent basis. If I could have sold on a 6 per cent basis I could have stood it. There ought not to be a condition where people having a patriotic impulse to put their money into 4 per cent securities have got to sell their railroad securities on an 8 or 10 per cent basis.

Senator UNDERWOOD. Would there be enough securities falling due out of the total holdings of the railroad securities, with the Government standing behind only the securities falling due, to stabilize the security market?

Commissioner ANDERSON. "Stabilize" is an indefinite term. The sound guess, and it is not anything but a guess, of the people that I discussed that with was that the general tendency of having the Government stand back of the financing of all the maturities, so that every railroad security be paid in due course, would be to give a far more flexible and less fluctuating and less unreasonable market for all sound railroad securities. That is the tenor of the result of our discussion.

Senator UNDERWOOD. You stated, Mr. Anderson, a while ago, that the immediate maturing securities amounted to about \$400,000,000. Have you got any data showing what securities are likely to mature that the Government under this bill would have to take charge of and stand for within the next two or three years?

Commissioner ANDERSON. \$450,000,000 covers the calendar years 1918 and 1919. Beyond that I have not gone; I don't know whether the railroad people have or not.

Senator UNDERWOOD. You have no information beyond that?

Commissioner ANDERSON. No; two years is all I have covered.

Senator GORE. Can you furnish the committee, to supplement your statement, a schedule of those?

Commissioner ANDERSON. Yes; there is a schedule. We will telephone down and have it sent up this afternoon.

Senator GORE. I would be obliged if you would put it in as a part of your remarks so we can have it before us.

Commissioner ANDERSON. I will do that.

The CHAIRMAN. The schedule of the securities falling due?

Commissioner ANDERSON. I thought that went in through the railroad people. I think I saw one in our commission. Did not your people have that, Mr. Patterson?

Mr. PATTERSON. I have a tentative list prepared which shows approximately \$225,000,000 in 1918, and \$225,000,000, approximately, in 1919.

Commissioner ANDERSON. It is about \$450,000,000 for the two years.

Senator UNDERWOOD. When the English Government took over the railroads, how did they meet this question of the securities of the railroads?

Commissioner ANDERSON. At the moment I have forgotten. My impression is that they did it in substantially the same way and are taking the securities; but I would not state that.

Senator UNDERWOOD. If you have any information on that question will you furnish it to the committee?

Commissioner ANDERSON. Oh, yes; I have been over the English taking; I think that is the way they did it.

Senator UNDERWOOD. I would appreciate it if you would supplement your remarks by that list.

Commissioner ANDERSON. We are preparing a statement in as brief a form as possible of the English and French experience. It is worked up, and we put some one at it last night for the purpose of setting up in succinct form only the matters in which you are interested—setting forth those matters.

The CHAIRMAN. That is the data I asked you for yesterday afternoon?

Commissioner ANDERSON. Yes; I never read the details of the French experience, but I did go with some care, about a month or six weeks ago, into a sketch of the English experience; but that point has gone from my mind.

Section 8 is a general grant that the President may execute "any of the powers herein and heretofore granted him with relation to Federal control through such agencies as he may determine, and may fix the reasonable compensation for the performance of services in connection therewith; and may utilize the personnel and facilities of the Interstate Commerce Commission, and call upon members of such commission, or any of its employees, or employees of any department of the Government for such services as he may deem expedient. No such Federal official or employee shall receive any additional compensation for such services."

Senator CUMMINS. I understand that to give the President authority, if he has not it already, to fix the wages of all the men who are engaged in operating the railroads, as well as the officers of the companies which have owned the railroads. Do you so understand it?

Commissioner ANDERSON. Well, I think that the power of the President, when he may take over the possession, control, and utilization of a great going business like the transportation business, to fix the wages of the people who are already in the employ of those agencies, is a necessary implication; but this has particular reference to the persons who are expressly employed as a part of the machinery which may be constituted de novo by the President.

Senator GORE. To administer the act?

Commissioner ANDERSON. To administer the act. The director, if he should be other than a man already in the Federal service, and his assistants, and the people who may be drafted—must be paid.

Senator CUMMINS. Yes, but he has already determined that for the present anyhow the roads shall be operated through the personnel already engaged in their operation, and they are a part at least of the agencies which he has created for that purpose.

Commissioner ANDERSON. Yes

Senator CUMMINS. Therefore I assume that the section would conform, even though he had it before inferentially, express power to fix the wages and compensation of those engaged in this service.

Commissioner ANDERSON. Well, it does confer that power, if there is any doubt of its present existence. At the present time the Director General has an office in the Interstate Commerce Commission Building, and he is as a practical matter utilizing many of the forces and facilities there paid for by the Government, but there are some new people brought in of whose compensation I know nothing.

Senator CUMMINS. You have no doubt but under the law as it is, and supplemented by this act if it becomes a law, that the President would have the same power over the compensation of a general manager of a railway company that was engaged in its operation that he has over a locomotive engineer?

Commissioner ANDERSON. I have no doubt that that is true.

Section 9, I will say a few words about, but I want to say at the outset that it raises a subject that I thought into but not through. By that I do not mean to imply any dogmatic egoism as to other points, but I think there are provisions in this bill that satisfy my own mind that I did the best I could on them.

But section 9 raises a point that I should want to give further study to before taking the responsibility of saying what ought or ought not to be done. It provides:

"That the President is hereby authorized, while carriers are under Federal control, to direct that the Federal workmen's compensation act of September, 1916, shall be extended so as to apply to carrier employees on such terms and conditions as will give due consideration to remedies available under State compensation laws or otherwise."

There is, as you know, a Federal employer's liability act, radically to be distinguished from the Federal workmen's compensation act; the liability act going upon the fault theory, and the compensation act going upon the mere loss of earning power theory.

In September, 1916, a Federal workmen's compensation act was enacted applicable to Federal employees. There are now about five hundred to five hundred and fifty thousand Federal employees. A commission was constituted under that act consisting of three persons, one of them a woman, having general administrative powers. In May, 1917, the Supreme Court by the decision in 244 U. S.—I think it is called *Winfield* against *The New York Central*—decided that the Federal Employer's Liability Act of 1908 was exclusive of State compensation laws and remedies under State laws so far as employees of interstate carriers were concerned. That destroyed, and as I understand it, a large share of the remedies previously supposed to be open to railway employees for injuries and death, leaving the interstate carrier employees the comparatively narrow field of claim under the Federal Employer's Liability Act. No legislation has since been enacted.

It was suggested that if the Federal Government was to operate these carriers there ought to be just and adequate system of compensation. Section 9 was drawn for the purpose of having that matter further investigated during Federal control, so that if found desirable, that compensation act should be extended to cover carrier employees. Just before the hearings before the House committee, members of the Workmen's Compensation Commission saw us and raised the question as to whether Federal control had not already constituted the carrier employees, of whom there are some 1,700,000 in number, Federal employees, and whether they were not therefore, in terms, under the act of September, 1916, entitled to compensation and treatment as therein provided out of the Federal Treasury.

That was an interesting suggestion and it was given some consideration. To make a long story short, the point came before the House committee. In the meantime, two of the three members of the commission made a minute in their records, in response to some demand, that those 1,700,000 employees were Federal employees and were entitled to compensation under that act. My own view is tentatively, not dogmatically, even if they are Federal employees for certain purposes, that it does not follow that they are under the compensation act of September, 1916.

Senator POMERENE. What authority did the Interstate Commerce Commission have to make that entry?

Commissioner ANDERSON. The Interstate Commerce Commission, sir, did not make that entry.

Senator POMERENE. I misunderstood you.

Commissioner ANDERSON. No; I said it was the Workmen's Compensation Commission. It was done by two out of the three of them. I do not think either of them was a lawyer, one was a woman and one was a layman. They had made some previous rulings relative to men that were building camps and one thing and another and paid out of the Federal Treasury, so they made that ruling.

And this is, at any rate, an arguable proposition. Of course the act is to be construed, so far as its words and letters permit, to carry out the legislative purpose. If the words are inconsistent with the manifest legislative purpose, you may sometimes disregard them.

If I may digress, let me tell you of the trouble you made in June, 1916, by using doubtful language in the national defense act—for the point may be apropos here—you undertook to make a new National Guard out of the militia, nearly all the force that we then had in fighting trip, by providing that they should enlist for three years instead of six years, if they would, etc., etc. Then some careful draftsman added that all acts and parts of acts inconsistent herewith are hereby repealed. In August, 1916, part of our militia was en route to the Border in trains, part of them at camps, and part on the Border. They were asked to enlist under the new act. Some of them had gotten married, etc., and did not want to go in for six years—which was quite natural. They had been asked where they stood; and some lawyers said that they had been legislated out of the militia by the new act and had no right to serve during the remainder of the three-year period. But the officers said they must, and put them in the guardhouse. Then they applied for habeas corpus writs and the first I heard of it, one of our judges was issuing habeas corpus writs for your soldiers just as you were starting them for Mexico. This put the accounts of the War Department into an indescribable condition, and they did not know whether they had a right to spend money for these militiamen or not. I got the Circuit Court of Appeals together in a special sitting, and the main argument that I had was that you gentlemen had not meant what you said; that it was not conceivable that the very learned men, such as everybody knew that the Congress was, just as we were getting into trouble with Mexico, had legislated out of existence its entire militia. I got two of the judges so to rule and thus straighten things out. They held that words can not control and thwart manifest general purpose. That principle, which is a perfectly sound principle, may be applicable to this situation. It is said that the Congress, in September, 1916, when, after extended discussions it undertook to provide a workmen's compensation act for its employees, then probably less than half a million, had in contemplation the taking over of all the railroad employees, 1,700,000, and bringing them under the act, it happened that the previous month it had passed the act under which that has now been done—it is therefore said they are under that workmen's compensation act. But I doubt if a court would so rule.

What ought to be done is a matter of no inconsiderable difficulty. This situation led me to say to the Director General that somebody who could give his undivided practical attention to that problem, who was conversant with the principles involved, who could talk with the various parties in interest, should be put at that job. It was impossible for me to give it such attention as it ought to have. Ac-

cordingly, we drafted Judge Mack, who has done a most valuable work on the insurance bill; and who is well up on that kind of problem, and a very excellent lawyer. He came over from New York last night and is at it now. We will present later our matured conclusions after we have had the benefit of the careful study he will give it.

As I said, it is a matter of vital importance, and of great moment, and requires the most careful and critical consideration. There are annually close to 200,000 accidents, and between 2,500 and 3,000 deaths among the employees of these great carrier systems, and it is hard to overstate the importance of the problem.

Senator UNDERWOOD. Doesn't it rest, the first point, on the question of fact as to whether these men are in governmental employ or whether they are still in the railway employ?

Commissioner ANDERSON. It might rest on that basis of fact or law, whichever you choose to call it, so far as the applicability of that present statute is concerned. But you want also to know whether, assuming that the statute applies, it is the kind of a statute that ought to apply. You want to know also what kind of a financial status you are going to create at the end of Federal control. The Federal statute, now on the books, has reference to employees that are paid out of the Federal Treasury, out of the ordinary accretions from taxation. These 1,700,000 are employees of a great, going business, supposed to be run on a self-supporting basis, and their compensation for industrial accidents should be charged, on any theory of operation, as a part of the operating cost of the various carriers. So that the problem is different in kind and not merely in degree.

Senator UNDERWOOD. I agree about that proposition, but the point I had in mind was this: The status of those employees, in case of accident, rests on a question of fact that we ought to ascertain, it seems to me, and determine. If they are Federal employees they can no longer sue the railroad corporation; if they are not Federal employees, they would have no standing under the law, and the only question is, if we assume here that knowledge of that fact, or final knowledge of the fact as to what is the status of these men, why our legislation might legislate away from them their existing rights.

Commissioner ANDERSON. Precisely that, and that is one reason why I wanted it examined by a very careful and competent lawyer who would go to the bottom of every question regarding their rights, as well as of the Government's liabilities, before I made any final suggestion as to what I thought ought to be done. I do not want to be held responsible for the results which might accrue.

Senator UNDERWOOD. You wish to make further suggestions to us on that question?

Commissioner ANDERSON. We will submit suggestions through the mature judgment of those of us who are most active in working these problems out.

Senator CUMMINGS. Mr. Anderson, there is another phase of this to which attention will have to be given. So far as the carriers are concerned—and I am not impeaching their good faith at all—they would have no motive whatever to reduce these liabilities or to defend suits that were brought against them for it; it would not affect in any way the compensation to which they would be entitled; and if they are not put under some compensation act—and I agree

there is very grave doubt whether the present act should be extended to include that—all the expenses incident to the maintenance of that department would have to be borne by the Government.

Commissioner ANDERSON. Well, unless it is charged off against the rate payer, through increased rates. I won't say "increased rates." Nobody knows what the financial result is to be under present rates.

Senator CUMMINS. It is apparent, therefore, if we are to go on suing the carrier for all these claims that the Government itself ought to have some opportunity of defending those suits.

Mr. ANDERSON. It has. I have no doubt that the President could discharge every attorney of every railroad in the United States taken over to-morrow morning if he chose to. The Government is potentially an intervenor in every suit pending against every railroad in the United States to-day—potentially.

Senator CUMMINS. And at least 95 per cent of all these claims are settled and compromised. The Government ought to have something to say about the compromise and the settlement of the claims.

Commissioner ANDERSON. Precisely. The whole business is running on the basis of assumed competency and of good faith of the great body of employes of the different carriers. No one of us can say positively that the grossest kinds of frauds are not being perpetrated on the Government at this moment. But I do not believe there is any substantial amount of fraud.

Senator CUMMINS. I do not think that.

Commissioner ANDERSON. No.

Senator CUMMINS. But they must proceed on the ordinary motives of mankind.

Commissioner ANDERSON. The Government has taken over the railroads, doing business with 1,700,000 employes, a capitalization of \$17,000,000,000, having a gross income of around \$4,000,000,000; that business is running to-day because of the good faith and the loyalty of the employes. The Government is, as I said, potentially an intervenor in every suit; and frauds may be being perpetrated; but if they are discovered (of course fraud cuts down everything)—if, there be found to be disloyal or incompetent employees, whether they be attorneys or others, they will get out of the Federal service. You will find such instances—but the experiment can not be tried, any more than any other great experiment in public work can be tried, except upon the assumption that, in the main, people are honest and loyal.

Senator CUMMINS. Well, I think that is a perfectly sound proposition, if we could create, legally or otherwise, the feeling upon the part of all the railway employes, officers and otherwise, that they are working for the Government and not working for their respective corporations—that is, that their first and chief obligation is to the Government.

Commissioner ANDERSON. The Director General has already issued some statements, proclamations, you might call them, which have carried that import, as I read them.

I pass, then, from section 9, simply repeating that we will hereafter ask leave to submit our mature views as to what ought to be done with that important topic.

Section 10 is a caveat:

That nothing herein contained shall be construed as modifying or restricting the powers heretofore conferred upon the President to take possession and assume control of any or all systems of transportation.

You will remember that only a part of those systems which are included in the act of 1916 have as yet been taken over. When we came to draw this proclamation it seemed wise to take over only the railroad systems and the terminal companies, kitchen and parlor cars, private cars, private car lines, elevators, warehouses, telegraph and telephone lines and equipment and appurtenances commonly used upon or operated as a part of said rail or combined rail and water systems. That is, the independent water lines are left outside. You have taken over the big railroad systems and they are connected with some water systems, and such parts of the telegraph and telephone lines as are appurtenant to or necessary as a part of the operation of those systems; but it was expressly provided that the trolley systems, including the so-called interurbans, should not now be taken over.

Senator CUMMINS. I want to ask you a question about that. In using the word "interurban" in the President's proclamation—it is not in this bill in any way—was it intended to exclude from Government control the electric lines that are parts of freight systems? We have in our country a good many electric roads, and we call them interurban, or they are popularly called interurban. Most of them do largely a freight business, and they are links in the systems of transportation, and it would be absolutely ruinous to them to take possession of their connection and divert traffic from them as might be diverted very easily, and still not guarantee them some income fixed upon their operations in past years.

Is it your idea that the word "interurban" covers such railroads as I have described?

Commissioner ANDERSON. I suppose if they are developments of electric lines running between cities, and doing a freight business rather as an incident of their passenger business, that they are excluded for the present; but I am not in a position, Senator, to rule on that point. A lot of those questions are arising every day, and the Director and his forces are ruling on those cases. Let me read you the part of the proclamation which undertook to differentiate for preliminary and fundamental purposes what was taken and from what was not taken:

Nothing herein shall be construed as now affecting the possession, operation, and control of street electric passenger railways, including railways commonly called interurbans, whether such railways be or not be owned or controlled by such railroad companies or systems.

For instance, on the Boston & Maine, between Manchester and Concord, N. H., there is a line for which we saw no reason for Government control. But the proclamation proceeds:

If and when it shall be found necessary or desirable, possession, control, or operation may be taken of all or any part of such street railway systems, including subways, and tunnels.

Also:

And operation in whole or in part may also be relinquished to the owners thereof of any part of the railroad systems, or rail and water system, possession and control of which are hereby assumed.

It was seen, when drafting the proclamation, that it was impossible, within a short category, to draw an accurate line between the things which might be necessary to be controlled in the public interest for war purposes, and those which were not necessary; that nobody could foresee all the conditions arising within 250,000 miles of railroad, commonly called steam railroads, and I don't know how many thousand miles of trolley roads. So we used that language; and those cases which are near the dividing line—roads that ought to be taken in so that their stockholders may have justice, roads which were included in the original category, and are perhaps found unnecessary, etc., etc.—those things are now being sifted out in the director's office.

Senator CUMMINS. I assume those things could be easier determined than here.

Commissioner ANDERSON. Yes.

Senator CUMMINS. But, knowing that you had a great deal to do with the formulation of the general plan, I hope that you will remember when you are considering hereafter that there are a great many lines that are operating with electric power which are as purely freight lines and used for the transportation of freight as are the steam roads.

Commissioner ANDERSON. Yes; it is quite true. There are at least two classes of reasons on which you can say that roads which have not been taken ought to be taken. One is that you find you need them for transportation purposes; the other is that you so affect them by the general taking over that you rob them if you do not take them in and compensate them.

Senator CUMMINS. That is the situation with ours. If they are not taken in the chances are they will be ruined, inasmuch as their connections have been taken in.

Commissioner ANDERSON. Those questions are being tried out, so to speak—submitted to the director general and his forces now. I have heard of some of them, but I am not charged with responsibility as to that problem. I know the general principles which we had in mind when the proclamation was drawn; I knew such cases would arise; that they had to be dealt with individually; but I tried to keep the proclamation down to as short a description as possible.

Senator UNDERWOOD. Let me ask you a question along those same lines. Take another road, a road built for industrial purposes, such as logging roads. Are they within the terms of this bill?

Commissioner ANDERSON. If they are common carriers; I think they are.

Senator UNDERWOOD. Is the draft of this bill broad enough to take them in under the law?

Commissioner ANDERSON. There is no carrier taken and injured that has not a right under section 3 to come in and make its claim for just compensation.

Senator UNDERWOOD. But the question I am asking you may be a question for the committee to determine how far it desired to go with legislation on that line, how far the public exigency may require it to go, and what I wanted to know is as to whether in your judgment the terms of the bill as it is now written would include all those industrial roads, such as logging roads, that were doing primarily a business for themselves, incidentally sometimes carrying

passengers—whether they are included within the language of the bill as it stands, and, if we concluded not to extend this bill toward them it would be necessary to make an exception?

Commissioner ANDERSON. Section 1 of the bill provides that the President having in time of war taken over the possession, use, and control of certain systems of transportation, is authorized to agree with any such carriers on a just compensation. It is therefore a question of fact as to whether any one of these industrial roads that you refer to has been "taken over." Now, the language used in the proclamation which is now outstanding, and a new proclamation may issue at any time, you know—

Senator UNDERWOOD. But this will change the form of law when we pass this bill, and as far as the proclamation is concerned it will wipe out of the proclamation, anything that is in this bill.

Commissioner ANDERSON. No; it won't limit the power which you granted a year ago last August at all, and section 10 is put in here for the very purpose of preventing the possible argument that this bill would destroy the existing power.

Senator UNDERWOOD. We are not going to pass the bill as it is written, but I am addressing myself to the fact that any legislation that we do pass, if it is in conflict either with the former legislation or the proclamation will wipe out that status.

Commissioner ANDERSON. It might wipe out the old law, but I do not think it would destroy rights legally vested under due authority. It could not destroy rights vested under a proclamation made under a power granted to and vested in the President.

Senator UNDERWOOD. I assume the President is taking charge of these railroads by authorization of law.

Commissioner ANDERSON. Yes.

Senator UNDERWOOD. If the law is repealed his authorization ceases.

Commissioner ANDERSON. Yes.

Senator UNDERWOOD. So, under the law as it stands, and under the bill as it stands, you think it is broad enough. It does include within its terms all the small industrial roads of the country if the President exercises that power?

Commissioner ANDERSON. Yes, sir; that is, if they are common carriers, if they are a part of a system of transportation he has the power to take them over.

Senator UNDERWOOD. If they are not, if they are merely operating for themselves, and not for the purpose of carrying freight and passengers, then they would not be included in the bill?

Commissioner ANDERSON. If they are not part of a system or systems of transportation, I do not think he would have power under the act of August, 1916, to take them over.

Senator UNDERWOOD. They may be a part of a system of transportation for transporting their own freight and their own employees, without doing a business as a common carrier.

Commissioner ANDERSON. Well, I don't think, Senator, that I would undertake to define more narrowly what you meant when you said on August 29, 1916, "in time of war the President is empowered, through the Secretary of War, to take possession and assume control of any system or systems of transportation, or any part thereof, and

to utilize the same," and so on. If the President thought it was necessary to take an industrial railroad which runs up to a coal mine—and coal is very much needed for war purposes—and use that as part of the system of transportation, for getting that coal, to supply it to our allies, and did not do it—I think he would be derelict in his duty.

Senator UNDERWOOD. That is a good illustration, and that is what I am coming to. If under this order he has taken over all of these lines, then practically every industrial railroad is within the jurisdiction of the Director General to-day.

Commissioner ANDERSON. The proclamation says that he will take control of each and every system of transportation "and the appurtenances thereof located wholly or in part within the boundaries of continental United States, and consisting of railroads, and owned or controlled systems of coastwise and inland transportation, *engaged in general transportation.*"

That is the limiting phrase.

* * * *engaged in general transportation*, whether operated by steam or by electric power, including also terminals, terminal companies, and terminal associations, sleeping and parlor cars, private cars and private-car lines, elevators, warehouses, telegraph and telephone lines, and all other equipment and appurtenances commonly used upon or operated as a part of such rail or combined rail and water systems of transportation.

That is what he took. And then there is an exception that I read a few moments ago, excluding the trolleys and interurbans; and that the extent of the proclamation may be hereafter narrowed or extended. That is the way it stands now.

Senator UNDERWOOD. Yes; but as it stands to-day, then, under that "engaged in general transportation," do you construe that to apply to the instance that you gave, of a road whose sole business was the transportation of coal to and from a mine, and not for general transportation?

Commissioner ANDERSON. Well, I do not believe I had better try to answer that, for very likely some of those cases may come down here and be ruled on by the lawyers who are dealing with that problem and have given it consideration that I have not been able to give it.

Senator UNDERWOOD. The reason I asked you, Mr. Anderson, is to get the facts. I think it is a question that we should consider in preparing this legislation, as to how far we are going to invade the field of industrial roads. Of course there are two sides to it. One side, it may be of great importance for the Government to take it over; on the other side, a great many of these industrial roads may be near the point of bankruptcy, and if we take them over and assume that we may have to pay for them; and I think it is a question for the committee to consider in defining this bill. But what I want you to do is to get the status of the Government, which is not fixed in my mind.

Commissioner ANDERSON. I do not think it could be "fixed in your mind." I think it was Judge Payne who told me that they had petitions from something like 200—I may not state it accurately—trolley companies which are yearning to be taken over and financed. Whether it is in the public interest to take them over. I don't know.

Whether, as a matter of justice, to affect their earnings, you ought to take them over, I have no information.

Senator CUMMINS. There is no provision in this bill for compensation to such roads unless they have been taken over by the President?

Commissioner ANDERSON. That is true.

Senator CUMMINS. They would be omitted.

Senator UNDERWOOD. Up to this time the only taking over has been the proclamation by the President. There has not been any technical taking over, but only as the railroads recognize the proclamation that has been issued. They are taken over if the proclamation is broad enough, just as well as the British systems are.

Commissioner ANDERSON. If they are railroads engaged in general transportation they are taken. If they are not railroads engaged in general transportation they have not been taken.

Senator UNDERWOOD. That is what I wanted to know.

Senator CUMMINS. Did not the commission consider that general question very carefully in what is known as the Tap Line cases, in order to ascertain and determine which of these short lines are common carriers, and which are not?

Commissioner ANDERSON. There is a very elaborate study of that in the records of the commission, part of which I have read, dealing with the tap lines, the allowances to them, etc. Our records are pretty complete on that point; I have no doubt that the facts are easily obtainable, so that the various industrial roads can bring their claims either to be remitted to an uncontrolled ownership of their own property, or to be taken over, promptly, to the attention of the director general and his forces. I should suppose that you would easily agree that an industrial railroad connected with coal mines or with iron ore would likely be very important in the mobilization of our national resources for war.

Some of the remote lumber lines probably would not be anything like as important.

Senator UNDERWOOD. The fixing of this proposition, as to what would be taken over in that way, goes to a great many questions in this bill, of course. The question of liability to the employee is one of them, and a very important one.

Commissioner ANDERSON. Yes.

Senator UNDERWOOD. The question whether the Government in one of these small industrial roads is now or hereafter liable for an injury that happens on them, or whether the corporation is.

Commissioner ANDERSON. Well, that may possibly arise as one aspect of it. Shall I pass to section 11?

The CHAIRMAN. Yes.

Commissioner ANDERSON. Section 11 provides:

That carriers while under Federal control shall, in so far as not inconsistent with, or with the provisions of this act or any other act applicable to said Federal control, or with any order of the President, be subject to all laws and liabilities as common carriers; and suits may be brought by and against such carriers and judgments rendered as now provided by law: *Provided, however,* That except with the written assent of the President no attachment shall be levied by mesne process or on execution on or against any of the property used by any such carrier in the performance of its duties as a common carrier.

That section is intended to carry out the same general undisturbing policy that is set forth in the proclamation.

I read now from the proclamation:

Until and except so far as said director shall from time to time otherwise by general or special orders determine, such assistants of transportation shall remain subject to all existing statutes and orders of the Interstate Commerce Commission, and to all statutes and orders of regulating commissions of the various States in which the said systems or any part thereof may be situated. But any orders, general or special, hereafter made by said director, shall have paramount authority and be obeyed as such.

It was our theory that the power granted under the act of August, 1916, to take possession, control of, and to utilize the transportation systems could be made fully and legally effective, and at the same time not disturb substantially the existing legal status and the right of shippers and passengers, and to the employees of the carries to continue in their ordinary relations. It was therefore so provided in the proclamation and section 11 is intended to carry out during the period of Federal control the same general purpose. The situation is analogous to that created by the appointment of a general receiver of the roads included in the proclamation. You do not know when you ride on a railroad whether it is a receiver-controlled railroad or a director-controlled railroad; the mass of the employees know no difference; neither do the passengers, injured or uninjured, know any difference. The lawyers and the bookkeepers have to know some differences between proceedings as to and suits affecting receivership roads and proceedings against ordinary common carriers. It is a rule of convenience, judge-made law, doubtless based on adequate reasons, why, when a receivership is granted, you open a new set of books and carry on your transportation business in the name of the receiver. But there is no controlling reason—certainly as to the outside business there is none—why the business should not be carried on in the name of the corporation.

This proclamation and this bill go upon the theory that the President is *pro hac vice* the general receiver, to use the analogy, of all the systems of transportation taken over; but that they are to continue doing business at the old stand, in the old way, with the old personnel, until and except so far as otherwise provided by general or special orders. The courts may go on entertaining suits and entering judgments—do everything except that they must not disturb the property in the hands of the President, which he has taken for war purposes. There the paramount national needs are asserted. In 99 cases out of 100 judgments will be paid by check just like a bill duly rendered. When judgments are rendered against solvent corporations you don't go to the trouble of taking out an execution; you get your judgment and collect it; there is no difficulty on that score.

Senator UNDERWOOD. Mr. Anderson, that presents a very important point, I think, in this bill—as important a point as we find in it. You have likened the position of the President to that of a receiver. A receiver could not change without the approval of the Interstate Commerce Commission a rate that had been established for the transportation of persons or property. Do you think the President can change the rate without the consent of the Interstate Commerce Commission?

Commissioner ANDERSON. Yes: the war power overrides other powers with which we have dealt with the carriers.

Senator UNDERWOOD. I have pointed out that simply to show that there is a vast difference between the Director General or the President and a receiver, because the interstate commerce act brings the receiver within the control of the Interstate Commerce Commission.

Commissioner ANDERSON. Yes; you made the law which made the receivers of railroads subject to the interstate commerce law; you made the law, or the people of America did when they made the Constitution, and you added to it, under which the President may take over and use for war purposes all these carriers.

Senator UNDERWOOD. I simply wanted to get your opinion about it. I do not think there would be much difference between us as to the point anyhow, that under the possession which has been taken of these railroads the President and the Director General can prescribe rates of freight and of transportation for general commerce as well as for the movement of Government property and troops.

Commissioner ANDERSON. There can not be any doubt about it. It is utterly impossible to reconcile the acceptance and the exercise of the war power with any theory except that when you take over a going business and thereupon sell something you must make the price for the sale; just as you must bargain for wages, or for steel or for coal to run it.

Senator UNDERWOOD. Undoubtedly, but of course we could use some other instrumentality than the Director General.

Commissioner ANDERSON. Yes.

Senator UNDERWOOD. To fix the rates that should prevail.

Commissioner ANDERSON. Undoubtedly you can.

Senator UNDERWOOD. The Government can do it, of course, and must do it; but it does not follow that it is the wisest plan to take away from the Interstate Commerce Commission its authority and transfer it to the Director General in that regard. I mean in so far as the charges that are to be made for the service rendered.

Commissioner ANDERSON. No, I think that is a perfectly open question, except I say you did determine that in August of 1916.

Senator UNDERWOOD. For certain purposes.

Commissioner ANDERSON. Yes.

Senator UNDERWOOD. Limited purposes.

Commissioner ANDERSON. Limited to what extent?

Senator UNDERWOOD. Well, for the transportation of troops and munitions of war.

Commissioner ANDERSON. "Or for such other purposes connected with the emergency as may be needed or desirable."

Senator UNDERWOOD. Well, that is a war emergency?

Commissioner ANDERSON. Yes, and you can not conceive of the mobilization of the resources of the American people for the war emergency unless you move coal to the manufacturing plants that are engaged in manufacturing munitions, just as well as you move troops to the troopships going to France.

Senator UNDERWOOD. I think you are right about that; it is a very broad policy, but I think you recognize that the war powers that the Constitution gives the Federal Government are not absolutely in the hands of the President. As Commander in Chief of the Army it is absolutely there; but as to those matters that require legislation it is in the hands of Congress.

Commissioner ANDERSON. Yes.

Senator UNDERWOOD. And as to those matters Congress must predominate.

Commissioner ANDERSON. That is my own view of what the President has done and ought to do; I put it not mainly, perhaps not at all, on the constitutional grant to him as Commander in Chief. I ground it on the necessary implications of your act of Congress, construed in the presence of this great war, it has created conditions never before contemplated by any legislative body. There never was a time in the history of the world it was contemplated putting whole nations into war, women on your cars and trains, women to manufacturing munitions, commandeering everything from a lump of sugar to a team of horses. There was never before any provision for such a war. When you said in the broadest language, that could be crowded into six lines, that the President could take "possession and assume control of any system or systems of transportation, or any part thereof and utilize the same to the exclusion, as far as may be necessary"—when you said "*as far as may be necessary*" you implied that he might utilize it without finding it necessary to exclude ordinary traffic. Otherwise the words "*as far as may be necessary* of all other traffic thereon" would not be there. And then, in fear lest by your speaking of troops and munitions you were too much narrowing the power, you added, "*or for such other purposes connected with the emergency as may be needful or desirable.*"

You were not content even with the word "needful"; you left it to the President's judgment of what was "desirable." I am able to find almost no limitations on his control. That is the act of August 29, 1916, section 1.

I may say, Senator, perhaps, that when I first read that act my mind worked on it apparently just as yours is now. There is nobody in whose mind are embedded notions of constitutional government who does not look askance at vesting such a power in any public official as that act vested in the President of the United States. You have to convince yourself that Congress intended to do it.

Senator UNDERWOOD. What I was directing my mind to more particularly was the effect of that act on this bill, and the reason I asked the question. Of course, if the war power was vested in the President, entirely, irrespective of the act of Congress, we could not limit it any way with this bill; but if he derives his war power for these purposes through an act of Congress, and Congress exercised the war power, anything we put in the bill which is a limitation on that enactment is a limitation of the power.

Commissioner ANDERSON. On the future exercise of the power.

Senator UNDERWOOD. Yes.

Commissioner ANDERSON. That is true.

Senator CUMMINS. What was in my mind was the very grave situation which will arise when we remember that the director general has the absolute power to fix rates and change them without a hearing and without any presentation of the facts as they would be presented by people who are interested in the matter, and it is perfectly plain that the Government must have power to fix these rates. and I am a little startled to think that all the people of the country are to be subject, without any opportunity for a hearing, to the will of the director general.

Commissioner ANDERSON. It is almost an appalling proposition. I woke up in April last, when I was United States attorney in Boston, and found that under the act of midsummer of 1798, although the power was nominally exercised through the President, that I could put in jail, without the right to a writ of habeas corpus, indictment, or trial, every adult German male alien in Massachusetts. No such power was ever before exercised by any man holding office in New England.

Senator CUMMINS. None such ever ought to have been given.

Commissioner Anderson. It was given by this act of 1798, at the time of the terror of the French war, and is the act under which alien enemies are now being held. For practical purposes every United States attorney in this country—of course he might be might be caught if he abused this power, because it comes through the President who acts through the Attorney General—but for practical purposes it had to be left to the local attorney to see in the first instances where the menaces to public safety are. It is an appalling power, utterly inconsistent with our preconceived and well grounded notions of safe and proper limitations of official power. But it exists, and I do not know as there is any way that we could get on without it.

Senator POINDEXTER. Mr. Anderson, you say it is utterly inconsistent with preconceived notions of constitutional power. Isn't the war power a constitutional power not only recognized in the Constitution, but construed and expounded in a most comprehensive way by the Supreme Court of the United States?

Commissioner ANDERSON. I think it is a perfectly proper power. But when I said "preconceived" I meant exactly that. We are all brought up in the atmosphere, as Judge Holmes once said, of the great guaranties coming down to us from Magna Charta; so that we cannot form in our minds the concept of such lack of liberty as now pertains to the alien enemy, and which is necessarily enforced by the men who happen to hold office for the time being. We have been brought up on a conception; the only proper conception; that democracy is a body of laws administered by a body of men, not a body of men administering their personal desires, and that is pretty near what this alien enemy law is, or might be.

Senator POINDEXTER. What I wanted to ask you was whether there was any conflict between the exercise of that power and the constitutional guarantees?

Commissioner ANDERSON. Not at all.

Senator POINDEXTER. It is essential to the preservation of the constitutional guarantees?

Commissioner ANDERSON. I think it is a perfectly proper exhibition of war power, and is therefore a part of our constitutional grant. All I intended to say was to illustrate how in times of war you face situations that rather appall you, as to the extent of power given, of necessity, and properly, and under the Constitution, to men who happen to hold office for the time being under these extraordinary conditions.

Senator CUMMINS. I am not so much questioning your view of the war power. Of course I have the inference that the war power, and all the war power can be exercised by the President without any legislation.

Commissioner ANDERSON. I have not suggested that, Senator. If I have given you that impression, I will correct it at once. I have grounded all I have said upon the grant of power made by the Congress to the President.

Senator CUMMINS. But you say when we passed the act of September, 1916, we gave the President the power of fixing the rates, if he chose to take possession of the railways, for all transportation, both of persons or property, whether connected with war or not.

Commissioner ANDERSON. Precisely; that is what I meant. I have put no part of what I have said relative to the scope of the proclamation or to the scope of the proposed bill upon the constitutional grant of war power to the President as Commander in Chief of the Army and Navy. I have grounded it entirely upon the construction we have put upon the grant to the President by Congress of war powers under the act.

Senator CUMMINS. Would you be willing to answer this question? You can decline, if it seems proper, of course. Do you not think that, so far as the movement of general commerce is concerned, the Interstate Commerce Commission's jurisdiction ought to be preserved; that we ought to preserve to the Interstate Commerce Commission the jurisdiction over those rates that it has hitherto had, with the opportunity for hearing and reflection?

Commissioner ANDERSON. I am not sure that I would be willing to go further than section 11, and than we went in the proclamation. If you should put this question as to whether I thought that the Director General or the President—as everything is the President—ought to preserve existing machinery, except so far as he finds it necessary to set it to one side in exercising the war power, I answer unhesitatingly yes. But whether in these war times, with the tremendous problems presented, there ought to be limitations by Congress on that war power I doubt. You gave power in broad terms. When the President undertook to exercise it what did he do?

Until and except so far as said director shall from time to time otherwise, by general or special orders, determine, such systems of transportation shall remain subject to all existing statutes and orders of the Interstate Commerce Commission, and to all statutes and orders of regulating commissions of the various States in which said systems or any parts thereof may be situated. But any orders, general or special, hereafter made by said director shall have paramount authority and be obeyed as such.

I venture to think that nobody can criticise that exercise of the power you granted. Now, think for a moment just how it operates. It has left all the existing machinery in full force and effect. But the very first general order that the Director issued, provided that at once carriers should route without regard to the orders of the shippers, by the most efficient, available open route. Now, nobody can have any doubt that that was a perfectly proper and necessary order for the Director at once to issue in these times of congestion, to utilize to the utmost, without regard to who owned it or to route used, the highways of the country, to move the traffic of the country; but it was inconsistent with the right given in the interstate commerce act, that the shipper may select his own route. You will find from time to time that you may go on from absolute necessity disregarding statutes and orders.

Senator CUMMINS. I can see that my question, however, was limited to the matter of compensation for the service. In other words, the rate of charge, or the rates for transportation both of persons and property.

Commissioner ANDERSON. There again you strike questions of great practical difficulty. Your first thought is, is such a full power given to the President to be exercised of necessity through delegation, but you are going to try to agree upon, and if you do not agree the court is going to fix, a flat rental that the taxpayers, through the Federal Treasury, have got to be responsible for for the use of these properties. Suppose the prices of coal, steel, labor, everything used on these railroads, keep going up and up and up; the President is responsible for the financial results, as between the people who pay taxes directly into the Federal Treasury, and the carrier ratepayers (who are really nothing but another kind of taxpayers). Ought the power which is responsible for the financial results to have to try out before another tribunal, not sharing in that responsibility, the question of what shall be charged for the services that he is bound to render? Isn't it an essential part of the exercise, the efficient exercise, of the war power that he who is responsible as between the Federal Treasury and the carrier systems for profits or losses shall be the authority to fix the charges for the services rendered by the carrier systems?

I have gone step by step to that position. I think I drew a memorandum—it is immaterial except as it indicated the way a man's mind works on this problem, when he is dealing with these tremendous questions—in which I had the whole power of the Interstate Commerce Commission retained; but I came to the conclusion it would not work.

Senator CUMMINS. The practical effect of the proclamation and this bill in one instance, would be this. I take it: Suppose that the 38 systems of railways in official classification territory should file an application or renew their applications to the Interstate Commerce Commission for an increase in rates. The commission proceeds under the law and holds a hearing, and after full examination it denies the application for an increase in the rates. The very next day the Director General, or the President, through the Director General, could issue an order that the application for the increased rate should be granted without any hearing whatever.

Commissioner ANDERSON. I think that is so.

Senator CUMMINS. It simply puts out of commission the Interstate Commerce Commission, except as it may act in an advisory capacity, does it not?

Commissioner ANDERSON. It puts a large part of the machinery of the Interstate Commerce Commission as to rate making to one side, pending the war control. Now, let me illustrate how utterly inconsistent it would be to make rates on the basis heretofore used in many cases. Under the long-and-short haul section rulings have been made and sustained by the Supreme Court, that carriers running from A to C should be allowed to have lower rates for the longer haul than for the shorter haul to point B, in order to meet water competition from A to C. It has been claimed—I do not state it as of personal knowledge—that in many such cases rail rates have been

made so low as to kill out the water competition and leave the water routes useless for commercial purposes. I am using this merely for purposes of illustration. I have been on the commission only three months and I am not as conversant with many of the cases as the older members. But I understand that in many cases rates have been made so low that freight is carried by the rail carriers over the longer distances at less than the cost of the service. This is working an injury not only to competitive water lines and to the rail lines, but also to the intermediate territory which has been thus prevented from building up as it would under normal and wholesome conditions.

Now it is provided in this bill that the President shall not only use water transportation in order that we may have as available as soon as possible steel and coal and other materials essential to the mobilization of our forces in this great war, but the bill also provides that the President may use money appropriated from the public treasury for the development of water transportation on inland and coastwise waterways. Is it conceivable that you are also to provide that there shall be competition in rates between the rail carriers and the water carriers that you are financing out of your own treasury? Such a proceeding would make us ridiculous. Yet this is simply a fair illustration of what would occur if rates continued to be made by the Interstate Commerce Commission on the old basis.

Senator CUMMINS. Another illustration is this: That while heretofore the rates for the transportation of freights and property have been required to be, when brought before the commission, fair and reasonable and nondiscriminatory, a rate having due relation to the value of the property which renders the service, hereafter the standard will be, What are the financial necessities of the Government? And it is entirely within the power of the Director General to raise as much of the revenue of the Government as he desires by imposing increased rates on shippers rather than through general taxation.

Commissioner ANDERSON. Well, that might be true, but the relations of the carriers inter sese, so far as their capital invested is concerned and considered as a basis of rate making, are, as you suggest, entirely changed. Their relations to each other in the use of joint facilities and of terminal facilities, are substantially changed; you can not make rates on the old bases. Indeed, I do not see any reason why I should not state this. Two of our commissioners have been asked to prepare a memorandum as to how the rate-making problems should be dealt with, both as a matter of law and a sound public policy, under the new status created; I suppose they are now working on it. But the tendency of further and more adequate analysis of the problems presented—of the necessary results of unification of existing transportation facilities in order to furnish the utmost transportation service—combined with the financial responsibility of the Nation, taken in connection with the fact that prices of things purchased have been rising rapidly and may fluctuate tremendously—leads to the almost inevitable result that you must vest in the general Government power of rate control; whoever is responsible for financing must have the rate-making power.

Now, I am not ready to admit that the shippers and passengers are not still entitled to nondiscriminatory and reasonable rates. I believe they are. I believe it would be a breach of duty if the Direc-

tor General used the power which I am inclined to think you must leave in him in order to make effective the war power that you gave to the President—if he used it in arbitrary fashion. Of course it will not be possible hereafter to give reasonable and nondiscriminatory rates, construing “reasonable” and “nondiscriminatory” as they have hitherto been construed, because so-called reasonable and nondiscriminatory rates have hitherto taken into account water competition and other factors incident to the competitive theory, which must hereafter be ignored because of the unified, noncompetitive basis upon which we are now proceeding.

Senator UNDERWOOD. The standard of reasonableness has changed. Commissioner ANDERSON. The standard of reasonableness has changed, the standard of discrimination has changed.

Senator POINDEXTER. I call your attention right here to the fact that such discrimination has been maintained hertofore and some time ago on alleged competition of shipping rates between the Atlantic ports and the Pacific ports. Now, for a period of 2 years, due to the war, there has been no shipping transportation there, practically speaking, but the discrimination has still continued.

Commissioner ANDERSON. And rates still stand. There is some suggestion that the rates ought to be changed.

Senator POINDEXTER. They have been changed by order of the commission.

Commissioner ANDERSON. Has that order been made?

Senator POINDEXTER. The discrimination still continues. There is no order that has gone into effect changing that discrimination, and that is one reason why I do not look with any very great apprehension on substituting some other authority for the time being, at least, for the Interstate Commerce Commission.

Commissioner ANDERSON. I have not been there long enough so as to feel very tender about hints of that sort.

Senator POINDEXTER. Are you familiar with the fact that the Interstate Commerce Commission made an order such as that referred to here just now, on the 30th of last June, which by the order was to go into effect on the 15th of October, and that it has been since suspended and has not yet gone into effect?

Commisisoner ANDERSON. I do not know the exact status, but I did hear some discussion. One of my colleagues apparently agreed with your view, that the cause for the discrimination having ceased, it should be ended. Whether it was one of the matters practically ended and determined before I had any official connection there, I am not positive. There is a report still pending which has not been passed. That is the status of it.

Senator UNDERWOOD. You stated that the President's order, acting under the authority granted by Congress, has wiped out the power of the Interstate Commerce Commission and invested the President with the power to make interstate rates. Would you apply that to intrastate rates as well?

Commissioner ANDERSON. With certain possible modifications; yes. The war power goes into the States; it is not based on the commerce clause, it is based on the war power. I should not have the remotest doubt that rates could be made from a Virginia coal mine to a Virginia port, whether for foreign commerce or for intrastate commerce. But I think that more discriminating and careful study will have to be

given as to the exact relations that some of those intrastate rates bear to the war power than arises relative to the relations of the interstate rates, which are under the commerce clause, always within your power.

Senator UNDERWOOD. Here is the point I had in mind: Under this order, as I understand it, for the time being the President has adopted all existing rates. His order has done that. In other words, if he has the power to establish rates—and I am inclined to think you are right about it, I have not reached a final conclusion—he is by his order promulgating the continuance of present rates until other orders are issued—has established a system of rates. Now, having established a system of rates, if he has the power to change it, and in his hands got the power, then the Interstate or State Commissions have power to change the rates as they exist to-day.

Commissioner ANDERSON. They may be as much out of a job as some of the Interstate Commerce Commissioners seemed to think we are. My opinion is that they will find themselves in positions of vastly more useful functions, just as we are.

Senator UNDERWOOD. But your opinion is that power has passed away from them?

Commissioner ANDERSON. I do not think they can make rates which will cut down the war power of the American people.

Senator UNDERWOOD. That is not the question. I really want to know, as a matter of guidance, your opinion. I want to know whether in your opinion what has been done has taken away from the State commissions the power to change an intrastate rate?

Commissioner ANDERSON. You want an answer on the mere technical question, or an answer on the practical question?

Senator UNDERWOOD. To the existing statute, not as to whether it is a practical proposition, but as to whether if a body of citizens appeared before a State commission and asked to change a rate, as to whether the power exists any longer in the State commission to change an intrastate rate?

Commissioner ANDERSON. If it has no relation to any order, general or special, made by the President through the director and affecting any of the systems of transportation engaged in general transportation taken possession or control of by the President, I answer, yes. But I repeat what I said a moment ago, that no commission, interstate or intrastate, can cut down the exercise of the war power that you have granted to the President of the United States.

Senator UNDERWOOD. Unless we granted him more than we could grant.

Commissioner ANDERSON. Unless you granted him more than you could grant, and I do not know as that is possible.

Senator UNDERWOOD. The proposition that I came to is that the President has exercised his power. He has established for the present, at least, all existing rates by his order, and therefore if they attempted to change them they would be going contrary to the orders issued by him.

Commissioner ANDERSON. Well, I think that probably the safest practical course to pursue is that which we are pursuing. The matter is being given very careful consideration, both in its technical aspects and in its practical aspects, and I do not think there will be very much difference of opinion among us in facing the emergency

that we do face. The only thing is to face it, to utilize what we have, and to disturb as little as possible. That is what we have undertaken to do.

Senator UNDERWOOD. I want to know what the status is after the order has been made?

Commissioner ANDERSON. I think this is my language here:

But any orders * * * made by such director shall have paramount authority and be obeyed as such.

Suppose an order was issued and a road said it would not obey that. I would send a brigade down there in charge of a general and have it obeyed. I do not care who refuses to obey. Let it be obeyed or enforced. Such is the war power, as I understand it.

Senator GORE. You said about the Congress granting more power than it could. The power to make a rate is a legislative power.

Commissioner ANDERSON. Yes.

Senator GORE. It is also a general principle that Congress can not delegate its power to legislate. We have escaped the conclusion that delegating the power to fix rates through the Interstate Commerce Commission, and it has been on the theory we lay down and describe the rules in accordance with which rates should be fixed, and saved our faces and our legislative power, and avoided an unconstitutional exercise of power, or the delegation of the legislative power to commissioners in that way. Could we delegate to the President the power to fix the rates, confer upon him a legislative power to fix rates without prescribing the way that the power should be exercised, and if we did would we not be subject to the same criticism?

Commissioner ANDERSON. I do not think so. I think the power to fix rules is a war power as much as when you authorize him to fix the price of horses. You have already authorized the President to fix rates in the transportation system; and for steel and coal, which go into the costs of operation of the railroads.

Senator GORE. If Congress can decide that it is an appropriate exercise of the power vested in the President, with the power to fix rates, could we not decide that an appropriate exercise of power to the Interstate Commerce Commission? The point I make is this: That one power expressly granted to Congress is a plenary as another. The power to Congress is as plenary and comprehensive as the power to carry on the war. There is nothing technical about the power to carry on the war. Congress decides what acts are appropriate and incidental to the war power. If Congress can decide the one it can decide the other.

Commissioner ANDERSON. Yes; I think so. I speak offhand. I have not given it much thought and therefore think my opinion entitled to no great weight. In a time of peace you exercise your constitutional powers to make rates that are reasonable and just by delegating the details of fixing such rates to Tom, Dick and Harry; to wit, ourselves, the Interstate Commerce Commission. You could just as well delegate it to the President as to Tom, Dick, and Harry. There is no constitutional limitation on the delegation to one instead of to nine or seven.

Of course, the commerce regulating power and the war power and all other powers rest on the Constitution and when there is a conflict between the war power and other powers my offhand view is

that the other powers must give way to the war power. I think the Supreme Court will so hold—that the war power is paramount to any and all other powers with which it comes into apparent conflict. The power to make war rests upon the right of the Nation to live. It is a right paramount to all other rights. It is a right to be enforced by a power limited by no inconsistent power.

Senator POINDEXTER. It is a good deal like the old saying that preservation is the first law of nature.

Commissioner ANDERSON. Perhaps the most important power granted by our Constitution is the power to declare war and to raise armies and navies and use them in a fight for national life. When, in the exercise of that war power, you have provided that the President may take over the transportation systems for the purpose of mobilizing the resources of the country and preserving its life, that power has precedence over any previous grants to the Interstate Commerce Commission and is paramount to the exercise of any power to any State or any commission existing under any State law inconsistent with the just and proper exercise of the national war power.

Senator GORE. There is one express power just as plenary as another. If you grant the power to the President to fix rates in time of war, the war power, without any rule to govern, then you could declare if the judgment of Congress was conclusive and does this, that is a point of the exercise of the power, and Congress could in time of peace grant the President power to fix rates in time of peace.

Commissioner ANDERSON. I do not think that would follow.

Senator GORE. Just as the Interstate Commerce Commission does.

Commissioner ANDERSON. I would not go that far. I would think in time of peace you might delegate to the President as well as to the Interstate Commerce Commission the power to fix rates which are reasonable, just, and nondiscriminatory; because that is not a delegation of the legislative power in essence. But you can not grant the President the power to fix any kind of rates, discriminatory or nondiscriminatory, provided that they are for the war interest of the United States. I think you can not move steel or coal to the water front without paying for it if it is moved by private carriers.

Senator CUMMINS. Why not?

Commissioner ANDERSON. Except in the form of taxation.

Senator CUMMINS. Can we not, if the war power supersedes all other powers of the Constitution?

Commissioner ANDERSON. I never said that, Senator.

Senator CUMMINS. You said it supersedes the power given to regulate commerce.

Commissioner ANDERSON. No; I did not quite say that. I said where the two were inconsistent.

Senator CUMMINS. Why can't we take property by paying just compensation?

Commissioner ANDERSON. My position is that the war power—I do not think my judgment is entitled to much weight with you Senators who have been thinking as legislators on this point—that where you have different powers, given by the Constitution to Congress and to the President, and there is an arguable conflict between them—as, for instance, the right to a nondiscriminatory rate or in the making of any rates—that you must reconcile that conflict by saying, "The

war power is paramount." But it does not follow, I think, that you can discriminate between citizens by taking A's property without compensation and paying B for his; because there is no such conflict in that field. That is taxation.

Senator GORE. Was your remark a few minutes ago that your power to fix rates was virtually the power to tax shippers, and this was virtually a delegation of the taxing power to the President without prescribing the rules by which it could be exercised?

Commissioner ANDERSON. I think there is some force in that, that it is a power to tax. I frequently use the word "taxation" in referring to carrier rates; I do not think it is inapplicable, although it has not an exact applicability.

Senator GORE. There is a very strong analogy.

Commissioner ANDERSON. It is a very strong analogy; it is compulsory payment for something we have absolutely got to have.

Senator CUMMINS. Do you think we can levy a direct tax without apportionment among the States?

Commissioner ANDERSON. Under the war power?

Senator CUMMINS. Yes, any power we have got. We are in war.

Commissioner ANDERSON. Well, I do not think you can be let into prohibited domains and kinds of taxation by being in war. You have the income tax power now.

Senator CUMMINS. We have the income tax power now, yes, but the Constitution still says that all direct taxes must be apportioned among the States according to their population, and I think it is the general opinion anyhow that even if you thought it necessary to raise money for the war that we could not violate that provision of the Constitution.

Commissioner ANDERSON. I should agree to that.

Senator CUMMINS. And therefore the war power is not all-comprehending and embracing. There are things in the Constitution that we are forbidden to do, even if we find it necessary to do them.

Commissioner ANDERSON. Well, I think it rather comes back to the proposition that where conflict arises, war power prevents. You remember that leading case after the civil war, the name of which I forget for the moment, where the man from Indiana was sentenced to be hung.

Senator CUMMINS. The Milligan case.

Commissioner ANDERSON. He did not like it, and applied to the courts for a writ of habeas corpus. The Supreme Court there laid down the general principles that when the courts were in session they would not let the war power prevail. That is the gist. But we are pretty far afield. The main things I say on that point are these: That when the war power is inconsistent with the commerce clause, the commerce clause must give way. I do not see that there is any inconsistency between the way taxation shall be apportioned among the people of the United States and on the various industries of the United States, in peace and in war. When you increase, as you do, enormously the amount of taxation, I do not see that there is any war necessity of encroaching upon the prohibitions incident to the taxing power; I therefore see no analogy between what I say as to the commerce power and what is suggested as to the tax power.

Senator POINDEXTER. It is largely an academic question, is it not; there is no conflict over the question of whether rates are reasonable or discriminatory?

Commissioner ANDERSON. I think it is an academic question; I know it is the attitude of the Director General that he is going to keep all existing machinery that he can without failing to do his duty; to utilize to the utmost the existing available machinery. That policy is indicated, you may say, in every line of the proclamation and in every line of the bill—no more disturbance and change than is necessary.

Senator POINDEXTER. It seems to me the distinction on this question is as to the interstate commerce power. The war power is exercised when we take over the railroads, and after we take them over it is a Government railroad, and the Government can run its railroad on such terms as it sees fit and proper. The limitations of the commerce clause do not apply to government-owned roads, as they would apply to the private-owned road.

Commissioner ANDERSON. That is a good way to look at it, and I do not know that it is not the best answer to the questions; but there ought to be as little disturbance of the rates and routes of shipment, that shippers have been accustomed, as possible.

Senator UNDERWOOD. Undoubtedly.

Commissioner ANDERSON. And we ought to have freight billed, as in the past; and the rights of shipper as against shipper should remain undisturbed, except as your war power may require change.

Senator ROBINSON. Mr. Chairman, I call your attention to the fact that the hour of adjournment has arrived. I would like to adjourn to Monday. I make the motion that the committee adjourn until 10 o'clock Monday morning.

The CHAIRMAN. Before that motion is put, I would like to state to Mr. Anderson that we would expect him to continue his testimony at such time as the committee does agree to reconvene. The motion is that we adjourn to meet Monday morning.

(The motion was seconded and carried.)

(Thereupon, at 5 o'clock p. m., the committee adjourned to meet Monday, January 14, 1917, at 10 o'clock a. m.)

GOVERNMENT CONTROL AND OPERATION OF RAILROADS.

MONDAY, JANUARY 14, 1918.

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE COMMERCE,
Washington, D. C.

The committee met, pursuant to adjournment, at 10.30 o'clock a. m., Senator Ellison D. Smith (chairman) presiding.

The CHAIRMAN. The committee will come to order. Mr. Anderson, you were proceeding when we adjourned over until to-day, on the discussion of the sections of the bill. You can now proceed.

STATEMENT OF COMMISSIONER GEORGE W. ANDERSON—Resumed.

Commissioner ANDERSON. Mr. Chairman, I think I had gone through 11 sections of the bill, explaining in a general way—and I regret to say from the results of what I said in a very inadequate way—the meaning or intended meaning of the sections.

Section 12 would seem to speak for itself. It is rather a stereotyped penalty section, providing for prosecutions as misdemeanors, of offenses arising under this act, the act of August, or any orders made under either act, and the prosecutions are remitted to the Department of Justice as in the usual course. I see nothing that I can add to what the section fairly imports.

Senator CUMMINS. Before you pass to section 13 I have a few questions about section 12. I call your attention to the language in lines 10, 11, 12, and 13, especially:

Or other persons who shall knowingly violate or fail to observe any of the provisions of this act, or shall knowingly interfere with or impede the possession, use, operation, or control of any railroad property, railroad, or transportation facility hitherto or hereafter taken over by the President * * *.

Will that cover the failure or refusal of any particular employee, whether he be of high or low degree, to remain with the property and continue to work upon it?

Commissioner ANDERSON. In my opinion, no. I do not think it affects the rights of employees to leave the employment.

Senator CUMMINS. But do you suppose if a general manager of a railway, who is very familiar with all its operations, and the director general desires him to continue and he desires to quit, and he quits, does he become a criminal?

Commissioner ANDERSON. I think not. There is no such purpose in the minds of those who drafted that provision in the section. I think there is nothing directly or indirectly involved of industrial conscription in this section, Senator.

Senator CUMMINS. Or take the further case: Suppose that a body of employees desire to quit in concert or indulge in what is ordinarily known as a strike; would they become criminals?

Commissioner ANDERSON. Under this section?

Senator CUMMINS. Under this section.

Commissioner ANDERSON. In my opinion, no. I have not intended to undertake to deal with that question that you have dealt with, or consider it, in connection with the Adamson law, or to make any suggestions to the Congress as to how it should deal with that important problem of the relations of transportation companies to their employees, collectively or individually. There is nothing in here which is intended to deal with that problem. Of course, if any striking employees should be guilty of acts of violence, such as the stopping of trains, they would be liable just as any mob picked up on the street might be liable under this section.

Senator CUMMINS. Of course, we already have statutes that would make them liable to criminal prosecution in that event, but I think the language that we have employed here, or that this bill employs, is a little broader than that which has heretofore been used to prevent the physical interference with the movement of trains, and I was not certain whether those who drew the bill had in mind an extension of the criminal liability or not.

Commissioner ANDERSON. I may say, broadly, that it was our purpose and desire in drafting this act to deal only with essentials, and as far as possible with noncontroversial essentials, in the way of supplementary legislation to that which you enacted in August, 1916, granting power to the President which has now been exercised. We had no purpose or intent of asking you in and through this bill to deal, either directly or indirectly, with the problem of industrial conscription which has been raised in some quarters, and if we have any language in here which raises a doubt on that problem it ought to be changed.

Senator KELLOGG. I would like to ask one question in relation to section 12: It provides any person who shall violate the provisions of any order or regulation made in pursuance of this act or of any other act concerning such possession, use, operation, or control shall be guilty of a misdemeanor. Do you mean to make the orders of the Director General statutes of the United States and any violation of them criminal offenses and indictable?

Commissioner ANDERSON. I think orders made under the power granted by Congress with relation to the handling of this property.

Senator KELLOGG. Suppose he makes an order fixing rates, and the shippers object to it and think they have a right to a hearing before somebody; or he makes all sorts of orders. Do you mean to say a violation of them is a criminal offense?

Commissioner ANDERSON. Well, a violation is one thing and an appeal to a court as to the validity of the order is quite another thing.

Senator KELLOGG. Would a man be subject to indictment for violating any order made by the Director General of Railroads?

Commissioner ANDERSON. No; unless it was a valid order. If it were a valid order, it would be in the nature of an ordinance, just as I think it arises under the interstate-commerce act now, that if orders made by our commission, under the power delegated by Congress, are

disregarded would be ground, as I recall it—I speak with a little doubt—of criminal prosecution, Senator.

Senator KELLOGG. We have so many criminal laws now that a man would have to have a couple of lawyers with him all the time to see whether he obeys them or not.

Commissioner ANDERSON. That is quite right.

Senator KELLOGG. I am not in favor of extending it to all kinds of orders in the country, that is all.

Commissioner ANDERSON. Do you think that is too broadly drawn?

Senator KELLOGG. Well, it would look so to me.

Commissioner ANDERSON. If it can be made narrower and be made effective as fitting into the orderly processes of the court, under the Department of Justice, offenses that ought to be put there, why, it will be entirely satisfactory to us. I have as little toleration of too widely extended power, particularly in the criminal domain, as anyone that ever practiced law.

Senator TOWNSEND. Do I understand you, Mr. Anderson—and I think I do—that this bill is not intended by its draftsmen, at least, to keep the roads open in this war emergency as against strikes?

Commissioner ANDERSON. It is not intended to give any new and express power with relation to dealing with strikes.

Senator TOWNSEND. Why ought it not to do that?

Commissioner ANDERSON. I do not think my opinion on that point is entitled to much weight. I thought about it. I have not thought far enough through it so that I regard any present judgment of mine of any substantial value to your committee. I recognize the difficulty and importance of the problem. Whether you ought to undertake to deal with it in this legislation, the main function of which is almost entirely financial, I doubt.

Senator TOWNSEND. Is it not possible to conceive—reasonably to conceive—that this whole power that we are granting to the Government may be absolutely nullified by a combination either of operators or employees—which is a term so used—to prevent their operation?

Commissioner ANDERSON. You ask me there to venture an opinion as to whether the carrier employees are in time of war to be possibly considered as holding up the war power of the United States. I do not believe they would change, but I think I am willing to express myself a little more positively on this point. The main function of this bill, as I said, is to provide the necessary financial supplementations with the broad grant of power of August, 1916. It is highly desirable that the owners of the securities of the properties should know as soon as may be just what their rights are to be and that, generally, financial conditions should, as soon as possible, be stabilized. I do not know when we are going to have another Liberty loan. Those of us that worked on this problem were of the opinion that we ought to suggest to Congress just as little legislation as seemed absolutely essential to deal with present obvious public needs, and I threw into the wastebasket reams of sections, so to speak, that were suggested as possible addenda to the powers here and cut out everything which did not seem to be absolutely essential for a proper dealing with that financial problem.

Senator TOWNSEND. I see your viewpoint all right, but I confess that I have read section 12 a number of times and I got quite a different idea from it—quite a different idea from the one that you

have suggested. I supposed that that was intended to include, among other things, a power which could under all circumstances operate the railroads.

Mr. CUMMINS. Mr. Anderson, this bill declares that whoever impedes the use or the operation of the railroad property becomes liable to the penalties that are provided in the section. Now, as I recall it, those words have never before been used in legislation which was intended to preserve the freedom of operation. I may be wrong about that. And I, like the Senator from Michigan, assumed that in using those words you intended to go further in that regard than Congress has ever gone before.

Commissioner ANDERSON. No, sir. I did not intend, and I repeat what I have already said, that in any draft that I have had to do with, to undertake to make suggestions to Congress on any matter affecting the right of employees to strike, or the so-called problem of industrial conscription; and if any language in here is broad enough to involve that interpretation, I think it should be changed. I think that problem is a separate problem, certain to involve Congress in a very considerable and perhaps a passionate discussion—one that ought not, as I see it, to be mingled with this essentially financial question here undertaken to be dealt with.

Senator KELLOGG. What was it that was intended to be dealt with?

Commissioner ANDERSON. It simply intended to turn over to the Department of Justice the orderly prosecution of offenses arising out of disregard either of the act of the Congress or of the valid orders made under an act of Congress.

Senator KELLOGG. Would you say "knowingly impede or interfere with the use, possession, operation, and control"? What kind of interferences would be prosecuted under that?

Commissioner ANDERSON. A very large number. Suppose there was an outside mob or that somebody took some of your cars away. Suppose they refused to obey and used a car or a train or a portion of the transportation facilities for one purpose utterly inconsistent with the orders of the Government, it would be a criminal offense.

Senator KELLOGG. Well, outside mobs interfering with railroad transportation is very rare, is it not? Did you ever hear of one, except a strike?

Commissioner ANDERSON. Why, there are very frequent interferences with transportation; yes, and offenses all the time of putting things on the tracks. We had a good deal of that. There was a case I had to deal with—I think growing out of the war—which was an attempt by a German to blow up a bridge.

Senator KELLOGG. You do not need any additional statute to cover that, do you?

Senator POINDEXTER. Those statutes cover all the offenses now.

Commissioner ANDERSON. Would they?

Senator KELLOGG. Do you mean this railroad is absolutely taken out, and all its operations, from all statutes of the United States?

Commissioner ANDERSON. No; but I do not think you ought to run any risk on that. We have a new status. You authorized the Government, or the President, to take possession, control of, and to utilize the transportation system.

Senator KELLOGG. And the Federal statutes against destruction of property apply.

Commissioner ANDERSON. Many of them would.

Senator KELLOGG. It is putting the railroads in a domain I am not familiar with.

Commissioner ANDERSON. None of us are.

Senator POINDEXTER. Senator Kellogg, suppose the Director of the Railroads should order a passenger train laid off in order to make way for freight, and the railroad employees should disregard that order and run the passenger train. What penalty would there be, or what redress?

Senator TOWNSEND. Suppose such a crew should refuse to run now or should insist upon running when their managers say they should not, and say, "This must be held on a siding" for such and such a train. What do they do now?

Senator POINDEXTER. I do not know what they do now; but there ought to be, it seems to me, some express statutory penalty or authority to penalize in some way, and I understand that is the purpose of this provision.

Commissioner ANDERSON. It was an omnibus to put within the domain of the criminal law, enforced by the Department of Justice, offenses against the existing act and this act and valid orders made thereunder. Now, if it is not adequate to meet that general purpose, or if it is drawn so broadly as to go beyond that purpose, it should be revised; but those are the purposes, and so, speaking for myself and for those with whom I worked on that section, those were the only purposes. You will observe, gentlemen, that over on the top of page 9 the criminal statutes of the United States, as well as the criminal statutes of the various States, shall apply upon the theory that the money which comes into the treasuries of the various corporations may be held as a matter of law to be the money of the United States. That seems to be the weight of legal opinion of those who thought most of that problem. If that be the result of the status already created, it is not safe, as we thought, to leave this statute unbuttressed by a new penalty provision on the theory that the acts hitherto enacted for the purpose of protecting separate corporations against embezzlements and interferences and stealings of that property were adequate.

Senator KELLOGG. You understand that all money paid into the railroads now under this management for freight rates is the money of the United States?

Commissioner ANDERSON. Yes.

Senator KELLOGG. How are you going to get it out of the Treasury, then?

Commissioner ANDERSON. Of the corporations?

Senator KELLOGG. No; out of the Treasury of the United States.

Commissioner ANDERSON. It does not go in there.

Senator KELLOGG. Where does it go?

Commissioner ANDERSON. It goes into the treasuries of the various corporations; and under the proclamation now outstanding and under this bill, if you make it a law, the United States Government will continue to use the existing machinery of the various corporations in the manner here indicated, and there is no practical way that we can see to work it out.

Senator KELLOGG. I do not think there is myself.

Senator GORE. If it ever becomes the money of the United States, it can only be taken out upon the act of Congress. I suppose that is what the Senator had in mind. I would like to hear you touch on that.

Commissioner ANDERSON. You have reference, I suppose, to the fact that there is outstanding a general statute which provides that all moneys belonging to the United States shall be turned into the Treasury of the United States and taken out only in accordance with the general laws applicable thereto.

Senator GORE. Yes. I believe there is a provision of the Constitution that corporation money shall be laid out by Congress and withdrawn from the Treasury only by an act of Congress.

Senator CUMMINS. This bill makes other provisions for that money.

Commissioner ANDERSON. Exactly.

Senator GORE. I was wondering whether you met that situation.

Commissioner ANDERSON. We met that situation, and it was discussed by a good many lawyers. I participated in the discussions.

Senator KELLOGG. What provision do you refer to, Senator?

Senator CUMMINS. The provision of the bill that the money shall remain with the carriers and only the balances shall be paid over.

Commissioner ANDERSON. That is the implication, and the necessary implication, of the bill, Senator, just as it was the only possible way, considering what could be done under the power of August, 1916, without any more legislation, that we could see it was possible for the President to exercise within the realm of practical business since the powers that Congress has delegated to him.

Senator GORE. But, Senator Cummins, the expenditure of money in the way of wages and salaries, that would have to be expressly authorized by Congress if it becomes the money of the United States.

Senator CUMMINS. I do not know whether there is an express constitutional provision that requires all money belonging to the United States to be paid into the United States Treasury.

Senator GORE. Is it not constructively in the Treasury if it is the money of the United States?

Senator CUMMINS. I myself do not see anything inconsistent in the title of the United States to the money as it goes into the hands of the carrier companies from day to day and the provision that an accounting shall be had and only the balances paid over into the Treasury. But I will come back to the other point, because it is a very interesting point.

Do you believe, Mr. Anderson, that if heretofore Congress had passed an act declaring that any person who impedes the use or operation of railroad property would be liable to criminal prosecution that a strike would be lawful, or would have been lawful, because the very purpose of a strike is to impede the use of property?

Commissioner ANDERSON. I do not believe you can answer that question flatly yes or no. You have got, in dealing with the problem of apparently conflicting rights, to consider a good many things besides the mere words of one statute. You have got to consider which, among other things, was the statute first enacted. You have got to consider the general purposes of the legislation. If the general policy of the law recognizes strikes as a proper economic weapon, the wage earners use it in their contests for higher wages, and if there is noth-

ing in the law except a general enactment against the impeding of the transportation systems you would be rather slow to say that by using that one word in a statute of general criminal application you would deprive wage earners of a generally recognized legal weapon in their contests for higher wages.

Senator GORE. Might not the word "forcibly" be put in there?

Commissioner ANDERSON. Perhaps you might put that in, the words "forcibly impede."

Senator CUMMINS. Heretofore Congress, wisely or unwisely, in legislating on this subject, has been very careful to restrict its prohibitions or penalties to interferences by force or intimidation or threats or acts of that general nature, but we have never gone to the extent of declaring it to be unlawful to impede the operation of property, however wise it may have been. I express no opinion about that, and I think it is the general notion throughout the country that this section of the law was intended to go further.

Commissioner ANDERSON. Let me make it clear, Mr. Chairman—perhaps repeating myself—that there are two tremendous problems with which you and Congress may have to deal, which I have not undertaken to touch in the draft I have submitted here. One is the question as to whether the right to strike should accrue to the employees of interstate carriers or those engaged in interstate carriage, whether under national control or under private corporation control, as it accrues to the employees of ordinary private industrial concerns. That problem was somewhat discussed at the time of the Adamson legislation. I have not intended to touch it here. The other is the war problem of industrial conscription, raising the question as to whether the same power that takes our boys and puts them into the trenches in France may not take the other boys who are not fit to go into the trenches in France, or ourselves, the old men, and put them into the munitions factories of the country, in the mobilization of the country's resources for war. That problem I have not undertaken to touch here.

The CHAIRMAN. In the discussion of the Adamson bill, if I remember correctly, the committee, in coming to the question of the then threatened or impending strike, took the position that if any impediment accrued to the railroad as an incident of the striker going out that we did not deal with that; but it was the opinion of the committees that they should not be allowed to forcibly restrain others from taking their places, if they so desired, or picketing or interfering with those who desired to take their places. So that we left the mere matter, as I remember it, of whatever impediment might grow out of it as an incident of their being out.

Senator CUMMINS. The Clayton Act described with particularity just what employees of the railroad companies may do and what they may not do in connection with a concerted cessation of employment, and I gather from what you say that you have not intended by the language employed here to change in any way the privileges, if you please, or immunities that are given to strikers in the Clayton Act.

Commissioner ANDERSON. That is exactly correct.

Senator POMERENE. Reference has been made to this section 11. As drawn here, it seems to apply to civil rights and liabilities, leaving the law in that behalf just as it is now. That could be very readily modified by making the language more comprehensive and

have it apply to all laws and regulations, whether civil or criminal. In other words, have all laws, civil and criminal, as well as other regulatory provisions, applying to carriers and other employees, to remain in full force and effect just as they have been heretofore, save and except as specifically modified in this bill. That would meet the question which the Senator seemed to have in mind, if I understand correctly.

Senator CUMMINS. No; I am not passing on the question of whether there ought to be a change in the law.

Senator POMERENE. No; I am not either.

Senator CUMMINS. There is much to be said on both sides of the question; but, no matter what you would say in section 11, if you specifically provided in section 12 that whoever impeded the use or operation of a railroad property should become liable to criminal prosecution, then that would override any provision that might be put into section 11.

Senator GORE. You might insert the word "forcibly." You need not put in the proviso, as we have several times.

Senator POMERENE. I may not have what you have in mind, but it does make very plain that it is not the intention of Congress to interfere with these criminal regulations any more than you interfere with the civil regulations. Of course, if the provision of section 12 is specific and in reality modifies the present law, it would prevail over the suggestion that I made.

Senator CUMMINS. It would if you did not put in the words "except as otherwise provided" in this act.

Senator GORE. We have once or twice, Senator Cummins, inserted the provision that it should not affect the rights guaranteed under sections 4 or 5 of the Clayton Act—whatever the section is I do not know. You might insert the word "forcibly."

Senator CUMMINS. Of course, it is for the committee to determine whether it wants to report any change in the law.

Commissioner ANDERSON. It is possible that sections 11 and 12, which Senator Pomerene rather implies be run together and be given full effect, as intended to be given by section 12. That, I understand, was the implication of your suggestion. That, I think, should be examined into, because it is very clear that our purpose is not to get into those important, but tremendously controversial, fields raised by some of the questions here asked.

Senator KELLOGG. But, Senator Pomerene's suggestion was that all regulatory laws apply, and it is your intention to cut out absolutely all regulation by State commissions of railroads in any regard, is it not?

Commissioner ANDERSON. No, sir.

Senator KELLOGG. You mean that State commissions, under this law, should continue to fix rates on the railroads?

Commissioner ANDERSON. I can not answer that yes or no. I dealt with that in a brief and very inadequate fashion on Friday, and what I stated in substance was that, in my opinion, no order of any State commission with relation to any rates, whether intrastate or interstate, should stand against the proper and necessary exercise of the national war power. Now, that is a very ambiguous generalization.

Senator KELLOGG. Yes; it is not a question at all whether it should stand against the war power, but the question is, Do you intend by

this act, by section 11, to leave with the railway commissions of the States power to fix rates and regulate intrastate commerce, or do you intend to take it away by this act? That is the question.

Commissioner ANDERSON. I think the power to fix rates, either under the interstate-commerce act or under any State act, has already been taken away, so far as the assertion of the war power of the President under the act of August, 1916, makes reasonably necessary, and that section 11 carries forward precisely the status which I think now exists.

Senator KELLOGG. You mean that during the possession by the Federal Government of these railroads under this power no State authority can regulate intrastate commerce?

Commissioner ANDERSON. I do not mean it as broad as that; no.

Senator KELLOGG. Well, can it fix rates?

Commissioner ANDERSON. It could fix a rate which had no appreciable effect upon the Presidential control and utilization under the war power.

Senator KELLOGG. Does not every rate affect the President's power to collect revenue from the railroads and the liability of the Government under the guaranty?

Commissioner ANDERSON. Technically, yes.

Senator KELLOGG. Does it not actually, in its broadest sense?

Commissioner ANDERSON. Well, not in the broadest sense.

Senator KELLOGG. Would such an order be valid by the State commissions fixing intrastate rates?

Commissioner ANDERSON. I do not think anybody except the Supreme Court can give a competent answer to that. My answer would be, to repeat myself, that if it tended sensibly or appreciably to encroach upon the exercise of the national war power it would be invalid.

Senator KELLOGG. Well, what would encroach upon the war power; do you mean interfere with trains carrying war material?

Commissioner ANDERSON. No; I think that would be too narrow an illustration.

Senator KELLOGG. What would be some other illustration?

Commissioner ANDERSON. Well, I think that if a State commission made an order that an ordinary passenger train, serving in the main ordinary peace purposes, should stop at a station by which it was running, as they are making orders of that kind now all the time, it would be perfectly valid. That is an illustration of what I think is left.

Senator KELLOGG. And you think if, then, the State should fix rates—intrastate rates—that those rates would be valid if they were for the ordinary commerce of the State and not on war material, we will say?

Commissioner ANDERSON. That is not so clear. They are financing them.

Senator KELLOGG. If you interfere with the running of a passenger train, you interfere with the revenue in some way, do you not?

Commissioner ANDERSON. Yes.

Senator KELLOGG. Could they fix the rates for the passengers on the passenger trains that they order to be stopped at a county seat?

Commissioner ANDERSON. I think the decision of that case would follow principles about as difficult of application, but of the same

substance, as the Supreme Court laid down in the Shreveport case.

Senator KELLOGG. Then the property which the Government takes over, which you say is Government property while the property is being managed, the revenues from it are Government revenues?

Commissioner ANDERSON. I did not say it was Government property.

Senator KELLOGG. Well, the revenues are Government revenues, then?

Commissioner ANDERSON. Yes; I think that is true.

Senator KELLOGG. That property may be directed and interfered with and controlled by a State authority?

Commissioner ANDERSON. Within very narrow limits.

Senator KELLOGG. I am trying to find out somewhere within a mile or so where those limits are.

Commissioner ANDERSON. I do not think I can get you within a mile, Senator. I said before that only the Supreme Court, on a case involving specific facts, can make rulings as to the possible conflict between the National power and the State power that will be binding on anybody. I do not believe that it is within the scope of Congress to lay down a rule there that is necessarily clear, definite, and binding.

Senator KELLOGG. Congress has the power absolutely to take over these railroads and to end all State interference and regulation, has it not?

Commissioner ANDERSON. It has, in my opinion.

Senator KELLOGG. Then it is within the scope of the power of Congress to provide just what regulation shall exist during the Government operation, is it not?

Commissioner ANDERSON. Of all interstate business.

Senator KELLOGG. No; of all business on the railroads in the Government's hands. Do you mean to say that Congress can take over these railroads and operate them and can not take from the State authority the power to regulate them?

Commissioner ANDERSON. No; I do not. I have been carefully guarding myself against saying that, because I thought your questions implied you held the other view, and the further I have gone into this problem of the power of the United States in time of war to deal with transportation the further I have gone in asserting the national power to do almost everything. I have not yet quite gone to the point of saying that I believe that a State commission can not have a train stop at a station to accommodate local traffic. Now, I am not sure that that is not a technical concession of more real power left in the State than really is left in the State.

Senator UNDERWOOD. Let me ask you a question there. If the Government of the United States built these roads, or some of them, through several States in the Union and started its operation, do you think that a State commission could regulate the operation of the Government roads?

Commissioner ANDERSON. Within any limits?

Senator UNDERWOOD. Make any regulations with reference to a Government road owned and operated by the Government of the United States?

Commissioner ANDERSON. I think the answer is no.

Senator UNDERWOOD. Then if they can not make any of the regulations in reference to the road that is owned and operated by the Government of the United States, is not the order, the proclamation of the President, under the existing law, put those rates and does it not put those rates exactly in the same position as if they were owned and operated by the United States, because we propose to pay them for the roads under this legislation?

Commissioner ANDERSON. Possibly, but not to my present thinking quite clearly. You authorize the President to take possession, control of, and utilize all or any part of the systems of transportation.

Senator UNDERWOOD. An indefinite control, as this bill stands now.

Commissioner ANDERSON. Well, the war is indefinite, so that makes no difference.

Senator UNDERWOOD. But I mean outside of the war, on that question the bill itself provides for an indefinite control because it provides that it shall not be returned to the railroads until Congress acts, which might, or might never happen.

Commissioner ANDERSON. Yes; but I do not think that makes much difference in the view. We are trying to get some view on them.

Senator UNDERWOOD. But the control of them is the same as if the President had said that he took them over absolutely—the absolute sole ownership of them.

Senator GORE. Does not this give the roads a good deal of the status, as to interstate and State regulation that applies to the navigability of a stream?

Commissioner ANDERSON. I think that last analogy may perhaps illuminate the problem somewhat.

Senator UNDERWOOD. Well, a State government can not interfere with the navigability of a stream.

Commissioner ANDERSON. No.

Senator UNDERWOOD. Mr. Anderson, let me try and clear up in my own mind a little bit the status of the proposition, because when we come to write the bill I would like to have a clear view of it. May I ask you if you have advised with the President as to the proclamation?

Commissioner ANDERSON. Yes; I have done a good deal of work on it.

Senator UNDERWOOD. I see in the proclamation that the President states that these railroads are taken over through the Secretary of War.

Commissioner ANDERSON. Yes, sir.

Senator UNDERWOOD. And Secretary Baker signed the proclamation with the President.

Commissioner ANDERSON. Yes.

Senator UNDERWOOD. I judge from that it was exercising, or attempting to exercise, on the part of the President the power to take over those railroads under the terms of the act of August, 1916.

Commissioner ANDERSON. Yes, sir.

Senator UNDERWOOD. Recognizing the fact that the law fixed the status of these railroads when taken over within the jurisdiction of the War Department.

Commissioner ANDERSON. That does not follow.

Senator UNDERWOOD. Then what was the purpose of providing that it should be taken over through the Secretary of War? The law required it, but I want to know the status.

Commissioner ANDERSON. In the view of those of us who worked on that problem, Congress had put those words in, indicating that it was purposing to exercise the war power, and following the statute, as the proclamation did, it seemed desirable and possibly necessary that the proclamation should follow the words of the statute, and that the Secretary of War should sign the proclamation.

Senator UNDERWOOD. Then you would conclude that it was necessary for the Secretary of War to act in the matter?

Commissioner ANDERSON. It seemed, at any rate, desirable.

Senator UNDERWOOD. What I am trying to do is to have some light thrown in my mind on the status; but what I want to ascertain is the viewpoint of the man who made the proclamation or prepared it as to whether it was necessary or not. In other words, if the President had made that proclamation without exercising the power through the Secretary of War as the statute prescribes, would it have been a valid exercise of the delegation of power by the Congress?

Commissioner ANDERSON. I do not know whether it would or not. When we came to that proposition there was no occasion to leave it open to that doubt.

Senator UNDERWOOD. Here is the point that I am trying to get in my mind: As to whether the technical control—that is, the legal control under the statute—is in the War Department of the Government? I think it makes a good deal of difference in this legislation. Mr. McAdoo has been appointed under the proclamation Director General of the railroads. Now, in reading the proclamation I took it that that was a delegation of the power granted to the Secretary of War, by him to Mr. McAdoo, as serving under him. The statute said the railroads should be taken over and operated under the office of the Secretary of War.

Commissioner ANDERSON. That is not exactly the language.

Senator UNDERWOOD. Let us get the language of the statute.

Commissioner ANDERSON. "The President, in time of war, is empowered, through the Secretary of War, to take possession and assume control of any system or systems of transportation or any part thereof, and to utilize the same to the exclusion, as far as may be necessary, of all other traffic thereon for the transfer or transportation of troops, war material, and equipment," and so forth.

Senator UNDERWOOD. That is what I said; through the Secretary of War. Then, of course, the Secretary of War, when he takes them over, has got to appoint agents to carry on the operations through him; and I take it in reading the proclamation and the statute the purpose of those who prepared the proclamation was for the Secretary of War to delegate the power that had been given him by Congress to some other officer to exercise, and that as he signed the proclamation with the President I judged that the men who prepared the proclamation thought that it was necessary for him to sign it and delegate the power to Mr. McAdoo, and that Mr. McAdoo is really acting as an agent of the War Department in exercising this authority.

If I am wrong about that status of the case, I would like to have you enlighten me, because it throws a great deal of light on this very question we are discussing. If this is being exercised through the civil power of the Government, then there may be statutes and regulations required to hold up the hands of the Government that may not be necessary in being exercised by the War Department. In other words, the thought occurred to me that these railroads are within the war power, and, being exercised by the War Department, they are being exercised just as a commissary or quartermaster's train would be exercised, and the Secretary could handle the situation just as he would if a quartermaster's train was moving through the country, if it is under his power, and it does not require a great deal of supplemental legislation, because then the War Department or the Army can step in and handle the situation. But if the war power is thrown away and it is not being exercised through the War Department, then it may require simply statutes to protect it and protect its operation, as any other civil function of the Government is protected. So that, as you were one of the men who prepared the proclamation I would like to have your view on that question as to whether Mr. McAdoo is operating through the delegation of the power from the Secretary of War or is operating independently from that.

Commissioner ANDERSON. I think the President is operating the roads.

Senator UNDERWOOD. I know that is true, but is he operating them through the Secretary or War or not?

Commissioner ANDERSON. I do not think the words "through the Secretary of War," the words limit the power granted to the President, certainly not after the possession has been taken and he proceeds to utilize the same. In other words, I think the President having taken possession by the proclamation duly signed by him and by the Secretary of War, as well as by the Secretary of State, as all proclamations are signed, as I understand, may exercise these war powers through any agency that he selects, whether it is Mr. McAdoo or anyone else.

Senator UNDERWOOD. You think when Congress authorized him to take over these railroads through the Secretary of War—I am not questioning the appointment of Mr. McAdoo, because I recognize the fact that the Secretary of War has just as much power to appoint him as he would have to appoint Gen. Goethals or any Army officer to exercise this power; but do you think when Congress so directed the exercise of the power through a certain department of the Government, that the President can abandon the exercise in that way and exercise it through some other department of the Government?

Commissioner ANDERSON. Why, taking that question exactly as you put it, I should think the answer would be no. But I do not think that is at all what has happened.

Senator UNDERWOOD. When Congress says that the President should take over these railroads "through the Secretary of War," did not that imply the operation through the War Department or through that department of the Government?

Commissioner ANDERSON. I do not think so.

Senator UNDERWOOD. What was the purpose of Congress in saying that?

Commissioner ANDERSON. I think that was put in there as indicating the exercise of the war power.

Senator UNDERWOOD. And it did not say the exercise of the war power; it designated the officer through whom it should be operated.

Commissioner ANDERSON. And they were taken over through the Secretary of War, who signed the proclamation, and Mr. McAdoo's appointment was evidenced by the same instrument that took the roads over, which instrument was signed by the Secretary of War; so that I have had no occasion since that time to determine whether or not the War Department, as a result of this proclamation was or was not conducting the transportation. We have considered it as the act of the President under the war power granted by that act and have never given any further consideration to the War Department after the proclamation was issued.

Senator UNDERWOOD. Yes; because he delegated all the power to an officer. I can recognize that part of it. But the status of the question still remains. If this appointment was made through the War Department—not of the general war power, because I think you stated on Friday that that war power belonged to Congress and must be delegated by Congress. It was one of the war powers that the President could exercise by reason of being commander in chief of the Army and Navy, but it must be a war power that is exercised by Congress. I think that was your statement on Friday, and that the Congress having exercised that war power by making this delegation to the President to assume control of these railroads through the Secretary, now the President could not exercise that war power in a broader field or broader scope than the delegation of the power that had been given to him by Congress, could he?

Commissioner ANDERSON. Well, I reply here, as I replied in substance on Friday, that I have never undertaken to consider what possible constitutional war powers the President may have, as applied to the present problem, but my thought has been that what he has done was grounded upon the legislative grant of power, and that it was a war power.

Senator UNDERWOOD. That is what you stated Friday, and that is the basis that I asked my question on. Assuming that you are correct in that answer, he was exercising it through a delegation of the power to him under congressional legislation, then so far as he exercised the power in that direction which you stated was the source from which he was operating, it is limited to the terms of the law, is it not?

Commissioner ANDERSON. That is my view. I do not by that mean to say that I have made any such critical study of the President's constitutional war powers as to be willing to state dogmatically that he has not powers that I have not thought of. I am saying that my mind has been going on the basis of your grant and not of the Constitution's grant to the President.

Senator UNDERWOOD. That is what I am coming to and have in mind. I am not asking you what may be another viewpoint, whether he had the power to take these railroads over, whether Congress had acted at all or not; and I do not think he had. Still, we are not discussing that at all. He did not take them over under the war power.

Commissioner ANDERSON. No.

Senator UNDERWOOD. We agree that he did take them over, then, under the power granted by Congress, and that, having taken them over under that power, so far as the power is concerned he is limited to the terms of the congressional enactment.

Commissioner ANDERSON. And its reasonable and necessary implications.

Senator UNDERWOOD. Yes. Then, if that is true, although Mr. Baker delegated the exercise of that power to a man in civil life, not to a man in Army life, the power is really being exercised by an agency of the War Department, is it not?

Commissioner ANDERSON. It is being exercised by the President under the war power. Beyond that I am not willing to go. Under the war power granted by you, I mean.

Senator UNDERWOOD. That is, through the War Department—the Secretary of War.

Commissioner ANDERSON. I do not think it was necessary to bring the War Department into it beyond having this proclamation and the appointment of the director signed by the Secretary.

Senator UNDERWOOD. Here is what I am coming to. We very often delegate powers to the Executive. We sometimes delegate a power to act to the Secretary of Agriculture, and on another point we delegated it to the Secretary of the Treasury. We delegate certain powers to the Secretary of War. It is certainly not lawful for the President to take away a power delegated to the Secretary of Agriculture and confer it on the Secretary of Commerce, for instance.

Commissioner ANDERSON. I assume so, but I don't understand that the Secretary of the Treasury is operating the railroads.

Senator UNDERWOOD. Surely not; I stated in the beginning he was operating them, appointed under this bill entirely independent of his function as an officer of the Government otherwise; but he is operating them under the agency of the Secretary of War, is he not?

Commissioner ANDERSON. He is operating them under the proclamation which is grounded upon this statute and all other powers the President thereto enabling. Beyond that I am not willing to go.

Senator UNDERWOOD. Yes; but the statute says they shall be taken over by the Secretary of War. Now, what I want to know is this: I see—at least, I judged—that you say you do not desire to answer the question either yes or no on the proposition, but what I want to clear up in my own mind is that if he is acting through the power of the Secretary of War, then has not the War Department the absolute right to control the operation and management of these roads like it would a commissary train?

Commissioner ANDERSON. It falls very little, if any, short of that.

Senator UNDERWOOD. A question of this other power really does not cut very much of a figure?

Commissioner ANDERSON. No, sir.

Senator UNDERWOOD. Now, on that same scope another question has occurred to me—

Commissioner ANDERSON. May I interrupt you right there in order to complete my answer?

Senator UNDERWOOD. Yes.

Commissioner ANDERSON. I have reached the same conclusion—not stated in quite as broad language, but from a somewhat different source and somewhat different line of reasoning than that which your

question indicates—but that the power you granted to take over the control and utilization of the transportation system in time of war is pretty nearly an unlimited power is a conclusion to which my mind has been forced.

Senator UNDERWOOD. Now, on that line—it is not directly pertinent, but I want to clear this point up—in thinking over the terms of the proclamation I want to go back to another point, and that is with respect to this revolving fund. If this is the exercise of the power of the Government, a civil power, not connected with the War Department, we may establish a revolving fund or an indefinite appropriation, but if it is in the exercise of the power through the War Department, as a war-making function, what you call the limitation of the power of Congress to make an appropriation for the War Department to exceed two years, our appropriations must be limited in their operation to two years; I take it we are making an appropriation for the War Department, and if this bill stands by that attitude, can we make an indefinite appropriation of \$500,000,000 and have it maintained as a revolving fund to be indefinitely used?

Commissioner ANDERSON. I should want to look at that provision and give it consideration before I made an answer to that question. It lies dimly in my mind that it was an appropriation for the Army or Navy, and not for any purpose which might pertain to a far-seeing appropriation before the war.

Senator UNDERWOOD. It is limited to the Army, is it not? There is no limitation of the appropriation for the Navy. The Constitution limits the appropriation for the Army.

Commissioner ANDERSON. I have not read that for months, or perhaps years. It is something that I have not thought of for a long while, if ever.

Senator UNDERWOOD. I am taking it as a proposition if these railroads are placed in the position of commissary trains or quartermaster trains with our limitation to furnish arms and supplies, is the same thing as to furnish arms for the troops, and there is no suggestion of that.

Senator GORE. The justification for this is, that it is an appropriation to support the Army.

Commissioner ANDERSON. I have in mind the various provisions of the Constitution that grew out of the jealousy of our forefathers against a standing army and an attempt to keep an appropriation for the standing army within a comparatively short time.

Senator UNDERWOOD. Undoubtedly, and if this were the exercise of that power, the limitation of that power are complied with.

Commissioner ANDERSON. I do not suppose there is any doubt as to your power to appropriate the money for the next 10 years to provide for the building of forts, munition factories, or other things.

Senator UNDERWOOD. Yes; I have not the language fresh in my mind, but I am rather inclined to think there is. Senator Poindexter, will you find that provision and read it?

Senator POINDEXTER. Yes; I have it right here. Among the powers granted Congress by the Constitution is this:

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years.

Senator UNDERWOOD. That was my idea. To raise and support armies, statutory armies, of course, includes the provision for maintaining the Army, quartermaster's trains, food, guns, clothing, and every other function that is necessary to keep the Army in the field.

Senator POMERENE. Military roads, etc.

Senator UNDERWOOD. Yes. Now, if the roads are taken over for the operation of the Army, for Army purposes, then it seems to me they are taking them over with that limitation.

Commissioner ANDERSON. I have not for a moment thought, and it never occurred to us, that there was any constitutional time limit as to appropriations for highways, even though the occasion of their appropriation was war, and it does not now seem to me—and I do not regard this as an opinion entitled to any great weight—that a \$500,000,000 proposed appropriation is an appropriation for raising and supporting armies within the meaning of that constitutional limitation.

Senator WATSON. This whole thing is a war proposition, is it not?

Commissioner ANDERSON. Undoubtedly it is done as a war measure.

Senator WATSON. That would simply be a question of the kind of proposition, whether it is a war proposition power.

Commissioner ANDERSON. You might provide for universal military training, and establish schools all over the country to train the youth of America to be ready for the next contest, but you will have to make provision which will run not only two years but over decades.

Senator WATSON. You would not claim, would you, that that comes under the war power of the Constitution in time of war?

Commissioner ANDERSON. Yes; I should; but not in the way in which you put that last proposition.

Senator UNDERWOOD. We never make a continuing appropriation for that purpose, and it has been repeatedly held that we can not. We might make an appropriation providing, without further action of Congress, that a million dollars should be appropriated out of the Treasury each year for agricultural purposes of some kind, or as we do, or have done until recently, I think, Congress has wiped out most of the continuing appropriations—that an appropriation should be made out of the Treasury each year of so many million dollars as a fund to redeem the bonded indebtedness of the country.

Senator GORE. That is also in the new legislation.

Senator UNDERWOOD. Yes; but when you come down to an Army appropriation we could not make an appropriation providing that \$2,000,000 should be appropriated each year as a continuing appropriation for the maintenance of the Military Academy at West Point. I think that is very clear.

Commissioner ANDERSON (reading):

To raise and support the armies, but no appropriation of money to that use shall be for a longer term than two years.

Senator WATSON. That use, of course, means for that purpose, does it not? That would include and intend its use for that purpose?

Commissioner ANDERSON. As to the two cases cited here, if I ever read either of them, they have gone from my own mind entirely; I do not think I ever considered that proposition in the Constitution except as an academic matter when I was at college.

Senator UNDERWOOD. The reason I asked the question—and I do not expect you to give a definite answer on a constitutional proposition of that kind that you have not thought of in advance—is this, that if you have any further law on that subject I should be glad to have it produced before we go to writing the bill.

Commissioner ANDERSON. Well, I shall have consideration given to that.

Senator CUMMINS. Allow me to make a suggestion, Senator Underwood. Suppose the Government should find it necessary to take over all the flouring mills in the country, not only for the purpose of furnishing food for the Army, but furnishing food for the people generally, it would hardly be said, I think, that an appropriation for that purpose would be limited by the clause in the Constitution which has just been read, and yet that is exactly a Federal purpose with the taking over of the railroads.

Senator UNDERWOOD. I think it all depends in the way or the purpose for which we take them over. If the act of August, 1916, had provided that the President should have authority to take over these railroads without the act saying through the Secretary of War we might assume that the railroads were taken for civil operation and not for military operation, but when it says through the Secretary of War, the question arises in my mind as to whether the intent of Congress was not that they should be taken over as an aid to military operation, and I really think that was the purpose of Congress.

Senator TOWNSEND. Have you just read the particular section of the act which took them over?

Senator UNDERWOOD. Mr. Anderson has just read it. It says through the Secretary of War.

Senator TOWNSEND. I think the reading of the section itself clearly carries out your contention, or rather inference, if you will permit me to read that.

Senator UNDERWOOD. I should be very glad to have you do so.

Senator TOWNSEND. This is the section of the act—section 1 of that act:

The President, in time of war, is empowered, through the Secretary of War, to take possession and assume control of any system or systems of transportation, or any part thereof, and to utilize the same—

Now mark—

to the exclusion, as far as may be necessary, of all other traffic thereon, for the transfer—

This is the purpose—

for the transfer or transportation of troops, war material, and equipment, or for such other purpose connected with the emergency as may be needful or desirable.

Senator UNDERWOOD. I think that supports the claim that I made.

Senator POINDEXTER. Does not that last clause that you read cover the entire field of the conduct of the war? There is no limitation on it.

Senator TOWNSEND. "For such other purpose connected with the emergency," you think, "as may be needful or desirable." Well, this is a war emergency.

Senator POINDEXTER. But we are not talking about the raising and supporting of armies. That is only one out of perhaps a thousand things that the Government can do in conducting the war.

Senator TOWNSEND. My suggestion was to bring to the attention of the committee the point made by the Senator from Alabama, that they were taken over essentially and primarily as a war measure, through the Secretary of War, and that there was no other thing contemplated in doing it.

Senator WATSON. The President in his message said that they were taken over agreeably to the provisions of this act and because of the power conferred on him by this act; and, furthermore, he said, in substance, that before he agreed on somebody who should be appointed, he consulted with the Secretary of War—evidently leaving the conclusion that he had called on one source or the other—that it was necessary for him to consult with the Secretary of War in order that the power conferred might be transferred from the Secretary of War to the appointee, whoever he might be.

Senator POINDEXTER. I think you are right about that, but I do not know that I agree with you as to the consequences that flow from that. I should like to ask the witness this question—if it does not interrupt anyone—supposing that this clause of the act under which this authority is exercised, providing it shall be through the Secretary of War, is mandatory, and I see no reason why it should not be; I do not see any reason why we should allow any controversy to exist on that subject—regarded as mandatory, does that place any limitation upon the use to which the Government can put these railroads, the mere fact that it is done through the Secretary of War?

Commissioner ANDERSON. I had thought, Senator, that that question was utterly immaterial until Senator Underwood raised the question as to whether it was not so connected with the raising and supporting of armies as to be subject to the two-year limitation. Otherwise, it seemed to me to be at first blush purely academic. That is the way we regarded it when we were struggling with that problem.

Senator POINDEXTER. Now, we appropriate from time to time—or used to do so more than we do lately, until we got up the great cry of “pork barrel”—a large amount of money for the improvement of rivers and harbors, and we provide that that shall be expended in effect through the Secretary of War, through the War Department, which is under the control of the Secretary of War. I will ask you if that is limited to the war power, or by the war power of the Government?

Commissioner ANDERSON. I do not think so at all; for instance, you dredged Boston Harbor and have been doing it ever since I can remember. That is done through the war power or through the War Department.

Senator POINDEXTER. The War Department, but not through the war power.

Commissioner ANDERSON. A million dollars is spent through the War Department.

Senator POINDEXTER. Can not Congress and the President confer upon the Secretary of War such powers as it chooses, or as they choose, within the Constitution, of course?

Commissioner ANDERSON. Undoubtedly.

Senator UNDERWOOD. I doubt that Congress could confer upon the Secretary of War a civil power to be exercised. The real question we are confronted with is as to whether Congress conferred civil power on the Secretary of War or whether it conferred military power on the Secretary of War, and I think the purpose of that act—it is not a final conclusion of mine as I am trying to get light on the subject—but my own judgment at the present time is that it conferred military power upon him in the taking over of the railroads. Of course if we did, it is subject to the limitations of the Constitution in reference to the exercise of military power.

Senator KELLOGG. Was not this clause of the Constitution "to raise and support armies, but no appropriation of money to that use shall be for a longer term than two years," prohibitive of a permanent appropriation to maintain armies, so that Congress would have to pass on the maintenance of the Army at least once in two years?

Senator GORE. You have in mind the English annual appropriation?

Senator KELLOGG. Yes. And was not intended to cover any other appropriation for the maintenance of the War Department.

Senator UNDERWOOD. I think you are wrong about that.

Senator KELLOGG. I may be. I merely make the suggestion.

Senator UNDERWOOD. It goes to the whole question of that power—the question of hauling supplies and equipment and the movement of the Army would come within it.

Senator KELLOGG. Certainly.

Senator POINDEXTER. Mr. Anderson, in view of asking you about this legal question here, as well as about the purpose of the act—I mean the constitutional question—is it not a part of the war power to feed the civil population of the country; is it not absolutely essential in conducting a war to keep the civil population of the country supplied with food?

Commissioner ANDERSON. I think it is. I think under the conditions of this war, or under the war conditions now obtaining, it is almost impossible to find any limits to the war power. There never was a time in the history of the world when nations were being mobilized as they are now.

Senator POINDEXTER. Another question. That is not in any sense of the word the raising or supporting of armies, is it?

Commissioner ANDERSON. No, sir; not as I view it.

Senator POINDEXTER. In other words, the war power of the Government extends to a great many things other than the mere raising and supporting of armies?

Commissioner ANDERSON. Precisely.

Senator GORE. Would not, though, Senator Poindexter, the feeding of the civilian population in that instance be with a view to keeping them engaged industrially in the production of military supplies?

Senator POINDEXTER. I think so, but that is not raising and supporting an army.

Senator GORE. It is supporting an army, undoubtedly, to keep the source of military supplies continuing.

Senator POINDEXTER. Suppose we decided, Senator Gore, not to have an army, or a very small one; assuming we could raise one in

an emergency; but, on the other hand, you came to the conclusion that we could not manufacture large cannon and projectiles in an emergency, and should decide to provide a large reserve supply of ammunition and cannon, but made no provision for raising and supporting an army; would you say that was the raising and supporting of an army?

Senator GORE. I think so; yes, sir.

Senator POINDEXTER. I fail to see how it would be so when there is no army and none provided for.

Senator GORE. The army might not necessarily be in existence, but it might be in contemplation of it.

Commissioner ANDERSON. May I inquire whether you put any time limit into the Lever bill?

Senator GORE. I do not think we did; but I raised the question and suggested that it ought to be done; but my recollection is it was not done.

Commissioner ANDERSON. I have sent for the Lever bill. That provision for that revolving fund was a new proposition to me, until I saw it in the Lever bill, and came from the Lever bill, and I do not remember any limitation.

Senator UNDERWOOD. The Lever bill does not involve the War Department of the Government and does not in any way go to support the Army or the raising or equipping or maintenance of the Army. That is purely the exercise of a civil function.

Commissioner ANDERSON. I would not be willing to agree to the first part of that proposition. I do not believe that you could ever suggest that the provisions of the Lever bill could not constitutionally be complied with except in times of war and as a war measure.

Senator CUMMINS. I supposed that the Lever bill was purely a war measure.

Senator WATSON. It was so decided.

Senator POMERENE. That is, limited in its operations to war.

Senator WATSON. I think there is an express provision to that effect.

Senator UNDERWOOD. It may be a war measure, but it was not passed for the purpose of supporting and maintaining armies.

Commissioner ANDERSON. Directly, no; but indirectly, yes.

Senator CUMMINS. The armies are the instruments with which we fight. That is the purpose of war, I hope.

Senator GORE. It is all subsidiary to that, practically.

Commissioner ANDERSON. I note, running down these provisions of the Constitution, that there is a limitation on the appropriations for a term not exceeding two years; it is limited to that—the provision for raising and supporting the armies. It does not apply to the provision “to provide and maintain a navy,” nor does it provide for the militia, nor does it apply to the militia provision. As far as we can see, and as far as I remember, you have made a rather permanent arrangement as to organizing and disciplining the militia.

Senator UNDERWOOD. Not in the way of an appropriation. It probably does not apply to the militia, anyhow; but I know we made a permanent appropriation for the militia. It is a question of appropriation, not of law. We can enter upon war, establish by law the organization or system under which an army shall be organized and conducted and maintained, but when you come down to the

appropriation for its maintenance, that can not be made by a continuing appropriation, but must be limited to two years.

Senator GORE. That is illustrated in this—we have had a standing Army for a century or so. It is a permanent, continuing Army, but the appropriations are annual.

Commissioner ANDERSON. Does not the Dick bill provide for an appropriation for a period of more than two years for the militia?

Senator UNDERWOOD. Not a continuing appropriation. It provided for certain guaranties, but they had to come to Congress every two years to get the money.

Commissioner ANDERSON. There is not any constitutional prohibition, at any rate.

The CHAIRMAN. You make the point that this agreement is in the nature of an appropriation and could not exist under the Constitution but for two years?

Senator UNDERWOOD. No; it is not an agreement. This is a provision for an appropriation of \$500,000,000, with the further provision that it shall be a revolving fund, which means that you can spend it, authorize its expenditure or loan, and come back, and still the power of the War Department for this being exercised under the War Department—and that is the basis of my argument—can continue after two years and go on operating with that \$500,000,000. I am merely saying if this is under that power, that the Constitution limits the power of unrestricted use of this money to two years. I do not doubt that we could appropriate \$500,000,000 now for the specific purpose, but to appropriate it to be carried over a period longer than two years I do doubt.

Commissioner ANDERSON. I think I will venture this statement, if I may, that the question under discussion brought my mind to the belief—I do not regard it as an opinion which you Senators may regard as of any great weight—but it is my own belief that the appropriation of money for the purpose of maintaining a transportation system is not an appropriation for the purpose of raising and supporting armies within the limitation suggested by Senator Underwood. I think it is more with regard to dredging harbors and canals and providing forts and doing all other sorts of things which are under the war power, but is not a direct appropriation for the raising and supporting of an army of men. There comes back dimly to my mind that I probably knew once—something about the historical basis of that limitation, and an examination of the history of that provision will bear me out in that tentative conclusion.

Senator GORE. The power to build forts and perhaps to aid munition plants and accumulate stores, as suggested by Senator Poindexter, grows out of the power to declare and wage war.

Commissioner ANDERSON. Yes, sir.

Senator GORE. This provision, Mr. Anderson, grows out of the English appropriations—the making of annual appropriations.

Senator POMERENE. Unless some Senators desire to ask something further upon this particular matter, I would like to call Mr. Anderson's attention to another proposition.

Commissioner ANDERSON. May I bring to your attention the fact that I have just received a copy of the Lever bill, and I find that there are no limitations, except in section 19 it is stated—

For the purposes of this act the sum of \$150,000,000 is hereby appropriated to be available immediately and until expended: *Provided*, That no part of this appropriation shall be expended for the purpose described in section 18—

That is something about certain employment, etc.

Senator GORE. I desire to suggest for the benefit of the record—and the chairman of the committee may perhaps remember—that I raised the question that it ought to be limited to two years, this \$150,000,000, and rather insisted upon it, but the committee decided not to incorporate it in the bill.

The CHAIRMAN. You had in view this same constitutional limitation?

Senator GORE. Yes; I raised that point, and it was insisted that it would not come within the purview of this inhibition, and I suggested that we ought not to leave any doubt about it, or leave any chance about it.

Senator POMERENE. The President has, of course, taken over the control or operation of these railroads under his proclamation. Now, in order to get your view, assume, for the sake of the question, that this bill became a law to-day, and that on February 1 the Interstate Commerce Commission should establish a schedule of railway rates. Is it your judgment that those should not be valid?

Commissioner ANDERSON. I think they would probably be valid except so far as under section 11 they might be inconsistent with the Federal control, or of any order of the President made thereunder. I have no doubt that the President could set aside any rate they made.

Senator POMERENE. I have no doubt about that proposition, either, that any rate that should be fixed by the Interstate Commerce Commission could be set aside by the order of the President. But let us go a little further. Suppose that a State utility commission had fixed a rate for intrastate purposes and upon intrastate roads, would that be valid?

Commissioner ANDERSON. You mean on February 1?

Senator POMERENE. Yes.

Commissioner ANDERSON. I think it would be under the same condition that if inconsistent with the Federal control or with any order previously made, or thereafter made, it would then fall.

Senator POMERENE. Now, whether that is true or not, I am very clearly of the opinion in my own mind that those rates ought to prevail until they are in fact universally set aside by the President; in other words, that the Interstate Commerce Commission and the several State commissions should be permitted to function as heretofore until such time as the President shall make some order contravening what they were doing. Was that not the purpose in drawing this bill in the way it is?

Commissioner ANDERSON. Yes, sir; with this possible modification: I do not know how my colleagues feel about it, but my own view was that after the President had taken possession and pending a fairly definite view as to the relations between the new control and the old control, and perhaps pending the ascertainment of the mind of Congress, it was not advisable for the Interstate Commerce Commission to go ahead making orders of wide import and extension in the rate-making field. I have been of the opinion that it was

better tactics and sounder coordination for us to allow the basis to be continued and feel our way along to the best working basis.

Senator POMERENE. Well, apparently the President did not deem it wise in his proclamation to in any wise interfere with the prevailing rates.

Commissioner ANDERSON. That is true.

Senator POMERENE. And under those circumstances it seems to me that this commission should be permitted to continue to perform their administrative functions just as heretofore. I can understand how the commission might be of opinion that not knowing exactly what the President might have in mind in the immediate future that it would be unwise to make an order as of to-day, for instance.

Commissioner ANDERSON. Yes; and let me bring back to your attention, Senator, what you may have forgotten—I think I stated it here on Friday. Two of our members are now engaged in the preparation of a memorandum indicating their views as to what the law is and what the policy ought to be as to the coordinating of rate-making power of the President and of the commission during this period of Federal control. None of us can afford to be dogmatic about it, and I state here only my individual opinion.

Senator GORE. How soon will that be available; have you any idea?

Commissioner ANDERSON. I suppose pretty shortly. They may be conferring about it this morning, for all I know.

The CHAIRMAN. What respect to this memorandum that you are making, touching the coordination of this rate-making power, involved in this bill, and now held by the Interstate Commerce Commission, are you looking toward incorporating it in this bill?

Commissioner ANDERSON. No, sir; what we thought was that it was desirable to have the fairly mature view as to what the legal status is, and also what the sound policy of cooperative orderly procedure should be, and we are all working pretty hard to that end. There are a number of new problems that arise out of this new condition which are, of course, immense; hence it was delegated to two members of the commission to study that particular problem and make their report. Now, the views that I have expressed here are my own views. I have talked the matter over with Judge Payne and somewhat with the director. I would not say that I have not discussed it more or less with one or two of my colleagues, but I have said nothing that binds or which tends to bind any of my colleagues on the Interstate Commerce Commission.

Senator GORE. That report will set forth the view of the commission as to whether they should suspend all future regulation or allow the status quo to continue?

Commissioner ANDERSON. I can not say what they will report. I can only say that two members of the commission have put upon their minds the task to reach a sound conclusion, both on the law and the proper policy in that realm.

Senator KELLOGG. As far as the President can do it by proclamation, he has settled that question anyhow in this particular, because he has provided that the existing status of the Interstate Commerce Commission and the State commissions shall continue until set aside by his order.

Senator GORE. That is as to the existing status. It does not involve future orders, orders made hereafter by the commission.

Senator CUMMINS. Let me see if I understand it. Is it your opinion that the carriers of the country could lawfully to-day file new tariffs with the Interstate Commerce Commission, proposing, we will say, an increase of rates, and that if the commission did nothing that at the end of the appointed time named in this statute, the tariffs would go into effect?

Commissioner ANDERSON. You mean before you enact any additional legislation?

Senator CUMMINS. Now.

Commissioner ANDERSON. Perhaps I ought to bring this to your attention, Senator. Under the amendment to section 15, they can not file increased rates without previous petition. I do not think that question arises in a probable form.

Senator CUMMINS. Well, I will put it in the other way. Do you believe that the carriers could file to-day new tariffs decreasing the rates, and in the absence of any interference on the part of the commission, have them go into effect at the end of the appointed time?

Commissioner ANDERSON. I do not think that such acts on the part of corporations and officers of corporations, who are clearly exercising the power delegated to them by the President, could have any legal effect except with his express or implied approval.

Senator CUMMINS. Then, how would the commission go about changing any rates under its present authority?

Commissioner ANDERSON. Well, this one specific method, and I venture to say you would get a great deal more light on it after my colleagues have worked out their memorandum.

Senator CUMMINS. I am quite willing to withhold the inquiry until that time.

Commissioner ANDERSON. I would like to say by way of a species of apology that in attempting to work on the problem I had to reach some conclusion satisfactory to my own mind. I have used up about all the brain power I possess in the past six weeks—I have not been quite a slacker.

The CHAIRMAN. We have not as yet finished with the different sections of the bill, and it is now practically 12 o'clock and the committee will take a recess until 2 o'clock, at which time you may reappear, Mr. Anderson.

Commissioner ANDERSON. I hope, Mr. Chairman, to say something about section 13, which I venture to hope the members of the committee will hear. It is a matter which seems to me has become involved in a rather unexpected controversy, and I would like to state to the committee how we came to do what we did do.

The CHAIRMAN. That is very important, and we will be glad to have you make a full explanation of it.

(Accordingly, at 12 o'clock noon, the committee took a recess until 2 o'clock p. m. to-day.)

AFTERNOON SESSION.

The committee resumed its hearing pursuant to the taking of recess.

STATEMENT OF COMMISSIONER GEORGE W. ANDERSON—Resumed.

The CHAIRMAN. Mr. Anderson, you may now proceed with your discussion of the bill. As I understand, you have not yet finished the section you were discussing.

Commissioner ANDERSON. Mr. Chairman, I wanted to say something about section 13, with quite a little care. I have been very much surprised and not a little disappointed to find that so much heat has been engendered in the discussion of section 13, as though it meant something beyond what it says, or was intended to lend support to either one of two sides of an economic or political controversy.

That section, in that form, was drawn by Judge Payne and myself. Judge Payne, I assume, is known to this committee. He is now counsel for the director general in railroad matters and is one of the leaders of the Chicago bar, I understand. I never met him until a few weeks ago, but he is a man for whose fairness of intellectual vision and unbiased candor of judgment I have conceived great respect. My acquaintance is limited, as I say, to two or three weeks of hard work with him; but you can form quite an opinion of a man's quality of mind and character even in three weeks if thrown with him constantly. Nothing occurring in my association with Judge Payne has indicated that he is in favor of Government ownership of railroads. We have had no occasion to discuss it, for neither of us had any notion of framing anything in this bill which would slant one way or the other on that proposition.

I stated this morning that it was the desire of those of us who worked out the bill to limit it as narrowly as possible to the necessary supplementing financial legislation, avoiding, as far as possible, every controversial field. I assume that the railroad people want more money than they ought to have; and we have no objection to their coming here and making their appeals. Everything else in this bill, as far as we could see it, was in the realm of cooperative, coordinating discussion, noncontentious; it was our desire that it should be that. I should like to add this: I am not committed to Government ownership of railways. I have never been ready to say that it is the best available system for the American people. My mind is entirely open. I had no expectation, when I went upon the Interstate Commerce Commission, that that question would become a live issue until after we had had pretty substantial changes in our legislation, affecting our regulation, and had had actual experience with that new legislation. I expected to see the anti-trust acts made inapplicable to railroads; I expected to see the anti-pooling section repealed; I expected to see control over the issuance of securities. My own view was that the American people would proceed with further experimenting along those general lines—I do not undertake to cover the whole field—and to determine the question of Government ownership only after that further experiment.

My mind is to-day absolutely open as to whether, after the war is over, it is not desirable to try out experiments along those lines. I say this, gentlemen, because I want to make it entirely clear that the draftsmen of that section were not trying to commit the country or Congress to any theory of Government ownership or continued control, in this general fashion, of the railroads.

The genesis of the section was this: We looked at the statute of 1916 and found that the President was "empowered in time of war," etc., and so the question arose as to what would happen after the war was over; does the power then definitely end? Ordinarily, if a law creates a status which, as a matter of practical good sense, can not end at a given moment, the law implies a reasonable time thereafter; so I said to myself—and I think I had it in one draft—the natural thing to do is to provide, if we refer to it at all, that the status now created under the act of 1916 shall continue during the period of war and until the President makes proclamation. Then I concluded that it was not a proper subject for presidential proclamation, because, under the act, which is already in force, new rights, additional obligations, private and governmental, have accrued, and other rights and obligations are certain to accrue under this act. Only Congress, therefore, it seemed to me, could deal properly and adequately with the status which had already been created or with the status which was intended to be created under this act. So I abandoned the notion that a presidential proclamation could properly end the presidential control taken under the act of 1916.

The next suggestion that came to me was that we ought to have a stated time; I think six months was the first limit I had in mind. I said that was too short a time; peace might come in midsummer, and we would get nothing done until the next winter; that we ought to have at least a year. But that, too, seemed rather short. Then it was suggested, in part by others and in part it occurred to me, that as the Government contemplated building a large amount of rolling stock, very likely \$100,000,000 or \$200,000,000 worth, and as the Government would probably during control have financed the carriers to the extent, perhaps, of hundreds of millions of dollars, and as the securities which would have been issued by the carriers to the Government would be on such terms as had been approved by the President, and as many of the carriers would have had their business relations to each other and to the available traffic substantially changed during the period of unified, noncompetitive control—that a problem of no little complexity, requiring considerable experience for the determination of the substantive and controlling facts was certain to be presented, and that Congress therefore ought to have an adequate time in which to work out the proper solution of that problem; otherwise a condition of chaos would ensue very detrimental to the weaker carriers and to those whose securities might be falling due at about that time in substantial amounts.

It was also suggested that the Congress which meets next after the declaration of peace would probably have problems of as serious and difficult statesmanship to confront as any Congress which has met, perhaps, since just after the close of the Civil War, and that there is some limit to the working capacity even of statesmen who constitute the American Congress. Consideration was also given to the fact that the problem as to what should be done would inevitably

involve radical differences of economic view, of great financial interest, adherents, and advocates of different policies as to the degree of control that ought to be continued if the carriers were turned back to private management, and questions growing out of the financing of the past, and perhaps still more difficult questions growing out of the financing of the future. It was also suggested that it was quite possible that those questions would involve disagreement between the two branches of Congress, and perhaps disagreement between Congress and the President; that the constructive policy then to be worked out was one upon which it was unsafe to prophecy that any Congress hereafter to be elected, according with the President, could then, in a short stated time, be held to the responsibility of agreement; and it was also suggested that pending final agreement enormous quantities of property would be left at the mercy of manipulating and speculating forces in the country; and that it always happens that the weaker investors, the poorer classes, are the chief victims of speculation and manipulation.

I have not stated adequately all of the reasons, but when we had grasped that situation—somewhat along the line I have indicated—there was not the remotest doubt in Judge Payne's mind, or my own—and when we put it up in discussion with the Director General, in his—that the only sound and neutral thing to do, was to say that this status created shall continue during the war—as to which nobody will disagree—and thereafter until Congress creates a new status. Congress must take the responsibility of dealing with the new status; if you put a time limit of one year, or two years, or any other reasonable time, and allow perhaps a wrangling Congress to keep on disagreeing until almost up to the end of the time limit, you will work, in reasonable probability, at any rate, very great injustice and wrong to a very large number of people, and will not, in our view, increase the probability of the adoption of a sound and constructive transportation policy, representing the composite—very likely compromise—judgment of the various forces in this country.

That is the essence of the genesis of that section. There was not the slightest intention, I repeat, in drafting it, as we did draft it, to create a status which would make in favor of Government ownership or against Government ownership. We had no purpose, except to work out in the best form we could think of, a provision that would really protect the rights of everybody; just as under sections 1, 2, and 3 we have sought to protect the rights of everybody—until Congress creates some other substitute method of protecting the rights of everybody.

Now, gentlemen, I hope that the same dispassionate consideration of that problem that we gave to it will mark the consideration and the discussion in Congress. It is a very serious matter. It is perhaps almost, if not quite, as serious as what you will do under section 1.

SENATOR POMERENE. In other words, you want Government control to continue until Congress changes from Government control to private control?

COMMISSIONER ANDERSON. Until you change to something, and take care of the status now created.

SENATOR ROBINSON. Your idea is, although I do not understand you have expressly stated it, that such a provision would be a protection

to the railroad securities—protect them from the evil effects of speculation and give them greater stability?

Commissioner ANDERSON. Give them greater stability until you provide under what new status they will continue.

Senator ROBINSON. In other words, if it were known to-morrow Government control would expire, or within 30 days, and Government control in the beginning was necessary to stabilize securities, you think that the withdrawal of that influence, without substituting anything in its place, might create trouble?

Commissioner ANDERSON. Yes, sir; a great deal of trouble for the weaker lines or the weaker holders of securities.

Senator ROBINSON. It has been suggested that such a provision in this bill will injure securities. While it is necessary to put a Government guaranty behind the securities to stabilize them, it is necessary to withdraw it within a definite time in order to accomplish the same end.

Commissioner ANDERSON. The most I can say about that is, I do not believe it. It seems to me to be pretty nearly absurd on its face.

Senator ROBINSON. If the Government guaranty is essential to those securities, it would seem that the withdrawal of that guaranty at a specific time might threaten their stability. It would seem that way to me, at any rate.

Commissioner ANDERSON. It would to me.

Senator ROBINSON. Of course, we understand that the primary consideration of many railroad men acquiescing in this legislation is to get the Government guaranty behind the securities. That is their primary purpose; that is what they desire.

Commissioner ANDERSON. The railroad representatives properly desire to protect their security holders. Perhaps they will claim more than they ought to have; I may say, without disrespect, that that is their job—to claim more than they ought to have. I can not understand, as I have seen reported in papers, how any sound thinking man will claim that there will be the condition of safety that now exists, and that this bill will strengthen and continue, if you set a definite death date for this Government protection before you have provided for a new life method for these alleged dying carriers—and some of them are dying carriers.

Senator ROBINSON. That is exactly the thought I had in mind. Of course, any scheme of Government control that is in contemplation now is dependent absolutely for its success upon the good faith and cooperation of the managers and employees of the railroads.

Commissioner ANDERSON. Precisely.

Senator ROBINSON. It will fail and fail hopelessly if they do not bring to the Government, in its efforts to control, good faith in every respect. Have you seen any evidence of a lack of that?

Commissioner ANDERSON. No; I have seen no evidence that I would be warranted in saying "indicates bad faith." Of course, a man in my position hears rumors. But I think I will state this on the other side, that it is my impression that the great bulk of the men in responsible positions in the railroad business, and the employees, have taken this Government control in good faith and are going to do their duty as loyal citizens. I expect there will be exceptions, but I believe they will be very few.

Senator ROBINSON. I believe that is true and I hope it is true, because, in my judgment, it is the most serious consideration connected with this whole subject. The Government must have the cooperation, in good faith, not of the managers alone, but the employees as well, and I believe that the evidence that has come to me is convincing that, on the whole, good faith exists. But a prominent business man who resides in the city of Washington said he came into Washington since the Government took control on a delayed train, and he could not understand why the train was waiting so long at a certain little station, and he asked an employee and the employee said, "Do not blame us; the Government is running the railroads now." That was the reply made to him by the employees in charge of that train some 8 or 10 times during the day, indicating to his mind a lack of cooperation as to those individuals who were concerned. He is not a man in sympathy at all with Government ownership of railroads or anything of that sort. He is a very prominent and successful business man here and has large interests. I wondered if anything of that sort has come to your knowledge.

Commissioner ANDERSON. I do not think I have any evidence that would warrant my saying that I believe that any men in the railroad service are acting in bad faith. I should not attribute, myself, the slightest weight to the statements alleged to have been made by these employees to that man.

Now, this seems to me to be the natural interpretation of it: The railroads have been congested and trains have been running badly for weeks and months. The last time I went up to Boston on the Federal Express, on a rate case, due at half past 7, I got there at half past 2. Of course the railroad train men have been bedeviled for weeks about their trains. What is the natural retort now? Why it is "Do not bother us railroad men; the Government is running the trains now." It is a perfectly human retort.

Senator ROBINSON. Yes; that may be so, if the delays are unavoidable and natural, but suppose that becomes a general practice?

Commissioner ANDERSON. If we find after the traffic gets thawed out literally and figuratively—because it has been frozen up both ways for the last three or four weeks—if you find after that there continues to be a lot of unexplained delays it will be time to look and see who is accountable for them; but up to the present time I think there is nothing from which any fair-minded man can draw any such inference.

Senator ROBINSON. I think that is so. This bill is drawn on the theory—if I understand the principle of the language—that the good faith and cooperation of the present heads of the various railroad systems and managers are indispensable to the success of Government control.

In other words, the Government could not organize a force to conduct or manage these properties if the railroad managers should decline to continue their services.

Commissioner ANDERSON. If the railroad operating men should decline to continue their services we could not compel them. I should not be ready to throw up the sponge and say the Government was going to quit, if certain managers said they were not going to play with the United States Government in time of war. I think the United States Government would go on mobilizing its forces and

doing business at the regular stand, without regard to the likes or dislikes of any managers who declined to do their work as American citizens.

Senator KELLOGG. I would like to ask a question or two about section 13.

The CHAIRMAN. I would like to ask Mr. Anderson this question: Since you say in the draft of the bill the question of ownership was not in your mind—it was simply the time Congress laid down as speedily as may be when the exigency calling for this control has ceased—now, that the question has arisen, and has been seriously discussed, as to the purport or the effect of section 13 with reference to the attitude of those who are in favor of Government ownership and those who are opposed, what, in your opinion, would be the effect upon the owners of the property if they were left uncertain as to whether or not this property would revert to them, in the use of the surplus that will be turned over into their hands in investment in the roads, using it for buying equipment and such other things as they might see would tend to keep their road up and also provide for the future? Do you think it would have any effect on the use of such moneys as they would have under this guarantee in that respect if they were left uncertain as to whether or not it would be Government property or their property?

Commissioner ANDERSON. I am not sure that I understand exactly the import of that question. Of course no security holder in railroads knows whether the Government is going to keep these properties or not.

The CHAIRMAN. Well, there is the provision in the bill where they can invest their own money in their own property and the Government will give them a proper credit for it as long as it is using it.

Commissioner ANDERSON. I do not believe, as to that particular provision, it would make much difference whether you change section 13—as I observe from the newspapers, some of the railroad attorneys want it changed—or let it stand as it is. I should suppose that the stockholders who have a beneficial interest in the surplus above dividends accruing to the more prosperous carriers would want to put that surplus where it would earn something for them; they could put it into the railroads under section 6, and have, under section 4, an increased return accrue because of putting it into the railroad. I should not suppose that it would make much difference in that particular part of the problem whether you put a time limit in section 13 or did not put a time limit in section 13.

Senator UNDERWOOD. Is there not this difference, though, in the status of the bill on that question, that if this is an absolute taking over for all time, or results in that, there is one measure for just compensation, and if it is a temporary taking over there may be, possibly, another measure of compensation; in other words, if we were permanently taking over the railroads for the Government, and an agreement was not reached between the railroads and the Government, and they were required to resort to the Court of Claims for their just compensation—if it was a permanent taking over, I take it the measure of their just compensation would be the value of their railroads?

Commissioner ANDERSON. If anybody knows what the value of a railroad is, that would be true.

Senator UNDERWOOD. If it was ascertainable, that would be the value.

Commissioner ANDERSON. If you take the railroads, you must pay the fair market value. That is the stereotyped language of the courts. But nobody knows what it is.

Senator UNDERWOOD. But that would be the basis of taking them over.

Commissioner ANDERSON. If you took the property instead of the use, that is so; yes.

Senator UNDERWOOD. On the other hand, if it is a temporary taking, and the bill so designates it, as a temporary taking, it may be that the courts would consider their fair rental value as the just compensation?

Commissioner ANDERSON. Just compensation for the interest you take.

Senator UNDERWOOD. Of course I recognize the fact, as I am sure you do, that we can not either fix the compensation or direct how it shall be ascertained.

Commissioner ANDERSON. That last is not quite correct, is it, Senator?

Senator UNDERWOOD. What is that?

Commissioner ANDERSON. Your last statement is not quite accurate, is it?

Senator UNDERWOOD. Yes; I think so. In the Monongahela Navigation Co. case, One hundred and forty-eighth United States, that is my understanding of Judge Harlan's decision.

Commissioner ANDERSON. That case only goes to the extent of saying you could only create a—

Senator UNDERWOOD. I do not think you can fix the basis on which compensation should be ascertained. That is what I meant. The court will look, in rendering its decision, to the time of taking and the method of taking and the length of taking and to the surrounding facts and circumstances that governed the taking and ascertain what would be just compensation; in other words, I take it that if the Government takes over a house in Washington for all time to come and the owner of the house is driven to the Court of Claims to sue that the court would hold that just compensation was the fair value of the property; but if the Government took over and commandeered his property for one year, that the court would hold that just compensation would be the rental value that year.

Commissioner ANDERSON. Judging from my experience since coming here and trying to find a place to lay my head, I am constrained to believe that if you take a house here for a year you will have to pay for it. [Laughter.]

Senator UNDERWOOD. I think you are right about that. It would not make much difference when you came to rental, but as a proposition of law—

Commissioner ANDERSON. I am with you on the proposition of law, but against you on the facts.

Senator UNDERWOOD. Do you not think it is a very material question for this committee to consider as to whether or not we shall make an indefinite—leave the question as to the length of time indefinite—or whether we shall fix a definite time for the taking, or a time that can be made definite?

Commissioner ANDERSON. It can be made definite whenever Congress provides the proper method for changing the status. That is the real point of the situation. Nobody knows how long the war will last, and I think no one will suggest taking the railroads back during the time of the war and for a reasonable time afterwards.

Senator UNDERWOOD. As far as the courts are concerned, I believe that they will hold that the length of time will be left entirely indefinite.

Senator CUMMINS. In one case it will depend on the action of Germany and in the other on the action of the Congress of the United States.

Senator UNDERWOOD. I do not agree with you. I believe the courts will hold that the proposition is definite if it can be made definite. I think they will assume that the war will not last forever; that there is going to be a termination of the war; and if we were to provide in this bill that this taking shall be for the length of the war, and, say, six months thereafter, that that would be a taking for a definite time, and they would fix their value of compensation upon that idea. On the other hand, if it is left until Congress shall otherwise determine—of course Congress has always got to—we could take it over absolutely next week or next year and sell it out again; but if we merely provide in here that it shall remain in the hands of the Government until Congress provides otherwise, it is an absolute taking, a permanent taking, of the railroads.

Senator KELLOGG. I would like to ask a question about that. As I understand you, you assume that Congress has to fix the terms on which this property is to be turned back?

Commissioner ANDERSON. Yes, sir.

Senator KELLOGG. Let us examine that. When we take over the property and agree on the compensation, pursuant to law, and we have fixed the terms on which we will sell it——

Commissioner ANDERSON. Yes.

Senator KELLOGG. How can Congress fix different terms when it goes to turning the property back?

Commissioner ANDERSON. It can not fix different terms for the time of occupation, but you have another part to your question.

Senator KELLOGG. What is that?

Commissioner ANDERSON. You have contemplated here perhaps one or two hundred millions of dollars of equipment belonging to the United States.

Senator KELLOGG. I will come to that.

Commissioner ANDERSON. Well, then, I will stop.

Senator KELLOGG. The terms on which the Government has taken the property are to be agreed on, and, of course, they can not be changed when we come to turn it back. Now, the terms under which the President will advance money to railroads will be agreed on when the money is advanced and equipment purchased, or should be and can be, can it not, under this bill?

Commissioner ANDERSON. No; the ultimate disposition of the equipment—it is provided in section 6 that this shall be disposed of as Congress shall hereafter provide—but we can not now see our way to provide for furnishing of equipment and of having it charged to the carriers as the President may direct——

Senator KELLOGG. But the President, when the money is advanced for making improvements—presumably we will take the securities of the railroads and say the terms and conditions on which those improvements will be made and turned over to the railroads will be agreed on when the money is advanced, will we not?

Commissioner ANDERSON. As to the particular additions and improvements to that property—

Senator KELLOGG. Yes.

Commissioner ANDERSON. I expect so; or if not, it will be decided by litigation in the courts.

Senator KELLOGG. The terms under which the equipment is bought or charged to any railroad can be agreed on also, can they not?

Commissioner ANDERSON. The equipment is not to be charged up as the property of any railroad under this bill.

Senator KELLOGG. Now, all properties that the Government take over from the railroads and all additions and betterments to that property, the terms are agreed on in advance, and I can not see how Congress can change those terms and conditions in turning the property back.

Senator CUMMINS. This bill expressly provides otherwise, does it not?

Senator KELLOGG. The excuse for holding the railroads an indefinite time is that Congress shall fix the terms when it is turned back.

Commissioner ANDERSON. That is not "the excuse"; and I do not think that is quite a fair statement of my position, Senator.

Senator KELLOGG. What is the reason, then?

Commissioner ANDERSON. It is perfectly clear that the railroads can not go back to the old competitive status of independent individual railroads without some further provision, or doing injustice to certain railroads, if you want to restore the old status. This bill provides for flat payments during the period of Federal control. It does not undertake to provide what shall be their status as to lost business and other things. That is only one instance. If you turn them back under the code of law which now exists—take one road, and you have absorbed its business in large part, or its profitable business, and made it a carrier of nonlucrative business. Is that to be given back to the railroad? It can not be, as long as the Government continues to operate, because the standard return accruing is based upon what they made when they had control of their own property; but when you turn it back to them, then they have to be dependent on ordinary conditions, which have been substantially changed during the period of Federal control. Let me give you another instance: The Government proposes under this bill to establish and finance water competition on the inland and coastwise waterways to take away from the rail carriers that have been hitherto making rates for the purpose of getting traffic from those carriers—

Senator WATSON. To get it away from the water carriers?

Commissioner ANDERSON. A lot of traffic supposedly profitable to rail carriers except when they are very congested. What would you do with that traffic?

Senator KELLOGG. If the Government establishes a system of coastwise transportation that takes away railroad business, and the railroads are damaged—

Commissioner ANDERSON. It may result in that in many instances.

Senator KELLOGG. Do you understand that the Government has to go and destroy that water transportation in order to put the rail carriers back to their original position?

Commissioner ANDERSON. No.

Senator KELLOGG. Has the Government got to pay the railroads damages for that additional transportation facility that has taken away its business?

Commissioner ANDERSON. No; but it would be grossly unfair to turn those properties back to the separate corporations without having legislation which undertook to deal fairly and reasonably and justly with the status then created. One, among other reasons, why we refused to accept the proposition which came from some sources that during Federal control books shall not be kept reflecting what business goes over the lines of separate carriers during Federal control, was that there might then be some basis, if you want to turn them back to the individual corporations, to determine what would be a just deal with those separate corporations.

Senator KELLOGG. You are going too fast. Wait a moment. When the Government pays a guaranteed income agreed on between the President and the railroads, or the courts fix the annual rental to be paid, that is the entire compensation for the taking and use of the railroads during the war, is it not? The Government is under no obligation to make any further payment or pay any other damages, is it?

Commissioner ANDERSON. No legal obligation if they have made an agreement.

Senator KELLOGG. Legal or moral?

Commissioner ANDERSON. You have more gift of prophecy than I, if you are willing to say that.

Senator KELLOGG. Is there any indefinite realm of liability that we are assuming?

Commissioner ANDERSON. There is a possibility of a right to claim, concerning which I can not prophesy.

Senator KELLOGG. Is the Government liable to damages?

Commissioner ANDERSON. I do not think it would be liable in law.

Senator KELLOGG. Or morally liable, when the Government has agreed on the terms on which it will take the property and use it?

Commissioner ANDERSON. Yes, sir; I do not think you can turn the railroads back to the individual corporations when you have had them under control and have changed the personnel of the organizations, and effected new water and competitive routes, and do justice to them without giving consideration to that status and dealing with it as the facts then require.

Senator KELLOGG. Will you state how Congress can compensate the railroads for establishing a coastwise water route?

Commissioner ANDERSON. I do not know, sir; but I believe it must be dealt with in the light in which it then appears.

Senator KELLOGG. In what respect—for the establishing of such a line or the suppressing of the line?

Commissioner ANDERSON. The latter, certainly not.

Senator KELLOGG. Shall we pay damages for the establishing of the line in addition to what the Government has already agreed to pay?

Commissioner ANDERSON. Perhaps arranging for some method of pooling traffic, so that the line which, if competitive conditions had continued and prevailed, instead of unified war conditions, may receive something in the future, something approximating the standard return which has accrued during Federal control, that being based upon what that carrier made under its own independent control.

Senator KELLOGG. If Congress ever undertook to do that of course the railroads would never go back in the next one hundred years.

Commissioner ANDERSON. I am not so sure of that. I do not know how delicate the situation will be.

Senator KELLOGG. I take it the sole liability of the Government is to pay the agreed rental, and that the Government is not liable for any incidental damages to the railroad property by reason of the building up of water lines, or competitive lines. There can not be any doubt about that, can there?

Commissioner ANDERSON. If they trade, there can not be any doubt about it, but I am not so sure that if this argument that is now being suggested that these lines are going to have their flat rental, which some people think is very modest, and their property kept up in the condition in which they were keeping it up during the private ownership period, and then have their property hurled back at them on a day named, in a condition of unknown market and financial condition, and unknown traffic-getting conditions—I should think some of them would be slow to trade.

Senator KELLOGG. There is not much limit, then, to the liability of the Government?

Commissioner ANDERSON. There is the limit of just compensation and just dealing. That is all I can suggest, Senator.

Senator KELLOGG. As I understood you the other day, you based the right of the Government to take over these properties upon the war power, did you not?

Commissioner ANDERSON. Upon the war power as expressed by Congress in the statute.

Senator KELLOGG. Yes.

Commissioner ANDERSON. Yes.

Senator KELLOGG. How long after the close of the war does that war power exist?

Commissioner ANDERSON. As long as you choose to fix it in your bill.

Senator KELLOGG. That is, under the war power, we can keep the railroads an indefinite time—15 years?

Commissioner ANDERSON. No, sir; but if you can take over these properties for the use you have taken them over, you may, in this bill, which provides in its terms, first, for any opportunity to trade—if they trade they are cut off, and if they do not trade they can go into the courts for relief under the due process provided in section 3—and in this bill it is provided that the properties shall remain in the status here created until Congress shall hereafter determine; if you do that, you are well within your rights.

Senator KELLOGG. If Congress should make a definite guarantee for all time on an income based on the value of these railroads' properties, and not continuing the guaranty during the war, do you have

any doubt that the owners of the railroad properties would accept a very much less annual income than they would for an indefinite period of one or two or three years?

Commissioner ANDERSON. I had not thought of that, Senator, until it occurred to me a few minutes ago under Senator Underwood's question. I am now inclined to think if Congress fixes control of the carriers this winter so that, instead of having their properties hurled back to them under a definite time limit, they know the status continues until Congress, after full consideration, fixes a new status, you can make a better trade this winter for the period of Federal control than you could if you now undertake to fix a definite time limit. I think you can trade with them at a less figure under section 13 as we have it than if you put into it a named time limit.

Senator KELLOGG. Do you imagine that a guaranty for two or three years would make that difference?

Commissioner ANDERSON. Yes; I think it would make a difference. If I were counsel for one of these carriers, and there was this section 13 as it is now drawn, with a provision in it that I had to look out for that property within 12 months after the treaty of peace was signed, and I thought peace was coming pretty soon, I would rather stay in court than be fixed by a flat rental.

Senator UNDERWOOD. They state that proposition, anyhow, because Congress may turn them back in three months.

Commissioner ANDERSON. You may turn it back before three months. You took that property into Government control; they are satisfied with it; the investors of America are satisfied with the justice they will get from the American Congress. They are not afraid of you if the American Congress can be required to sit and deal with the problem until it agrees upon what is just.

Senator KELLOGG. Then your idea is we have got to make one bargain when we take them over and another one when we turn them back?

Commissioner ANDERSON. Yes; essentially so.

Senator KELLOGG. Then they do not know what they are going to get?

Commissioner ANDERSON. No, sir; nobody knows what is going to happen.

Senator KELLOGG. Your idea is that because a guaranty will stabilize the securities market now, the longer it runs the more it will stabilize it?

Commissioner ANDERSON. No; I did not say that.

Senator KELLOGG. That is the substance of it?

Commissioner ANDERSON. No; that is not the substance of it. My idea is we have stabilized the market and improved greatly the confidence of the holders of securities of the American railroads by what has been done, that if you tell the holders of the securities that the existing status is to persist until the Congress works out another status, which satisfies its conscience and judgment, that will still further stabilize the security market and you will make those people feel more content than they have for more than 10 years.

Senator KELLOGG. The result of your indefinite period would be this. If the President desired to veto any bill turning back the properties, it would take a two-thirds vote of Congress, both houses,

to turn the properties back to the owners; and we could not establish any policy now that would not require a two-thirds vote of Congress to change.

Commissioner ANDERSON. Well, I suppose that clearly must be so. We have got to agree on what the policy of the American people is to be as to the transportation system.

Senator GORE. Your theory is that there are so many unknown factors that will arise at the close of the war that can not be foreseen now, that they can not be embodied in a contract or an agreement at this time?

Commissioner ANDERSON. That is one part of it. I gave up long ago in my work on this problem, trying to put anything into the bill except those things which are essentially a part of this financing, and for the obvious and reasonably anticipated needs, for, say, during a couple of years. You asked me for figures; I gave them for a two-year period. I thought—to repeat myself, because I am not sure whether you were in or not, Senator Gore—that when we got that section 13 in that form we got an absolutely neutral expression of the clearly developed necessities of the situation.

Senator POMERENE. Mr. Anderson, I do not think your reasoning is sound on that proposition.

Commissioner ANDERSON. Well, I am sorry.

Senator KELLOGG. I do not think so.

Senator POMERENE. Let me make a brief statement here as to the way this appeals to me. In this Government we have got to assume that the Congress will have charge of this subject, is just as competent to take care of the subject as we are.

Senator POMERENE. If we can not base legislation on that assumption, we are in a pretty bad way, it seems to me. Now, your conclusion is based upon certain assumptions of fact, first that Government control is going to be absolutely successful.

Commissioner ANDERSON. No.

Senator POMERENE. Just wait until I finish. Second, that this is going to be absolutely satisfactory to the railway employees and to the investors themselves; and now you leave an uncertainty here as to the time within which this Government control is to cease. It seems to me that if we provide that this control is to stop at a given time, we are in effect saying that the railroads shall be controlled by the laws as they now are. That is definite, as definite as we can make it by legislation. Now, you referred a moment ago to a quarreling Congress. We will assume for the sake of the argument—

Commissioner ANDERSON. No; "nonagreeing," I think.

Senator POMERENE. We will put it that way, a nonagreeing Congress. Then you have got this entire proposition held up by the gills, because there is a nonagreeing Congress.

Commissioner ANDERSON. Yes.

Senator POMERENE. That may cover a period of one year, two years, or three or four or five years.

Commissioner ANDERSON. Precisely.

Senator POMERENE. And during all of this time here is all of this uncertainty so far as the railway employees are concerned, uncertainty so far as the investors are concerned, and uncertainty so far as the shippers are concerned. If the railway people and if the Government know that at a given time Government control is going

to cease, it seems to me that men who are capable of being in Congress at that time will take into consideration that fact and try to determine some definite plan of legislation, if that becomes necessary; and it seems to me that every reason that I can think of suggests that there be a definite time fixed when we shall cease to have Government control. I do not say now whether that is three months, six months, nine months, or twelve; but that there should be something definite about it, in my present frame of mind, I have absolutely no question.

Senator TOWNSEND. There is another thought comes to me, Mr. Anderson, in reference to this proposition. You have injected an element of doubt into this matter which never had occurred to me before; namely, that whatever settlement we make now, whatever agreement we make in this bill is not necessarily conclusive that the railroads, some of them at least, may take advantage of, and the Congress maybe hold up the Government for further compensation for the taking of the roads.

Now, is not this absolutely certain, Mr. Anderson: If this matter is left open, if this question is undetermined as to whether the roads are going back into the hands of the owners or not, that we are going to have political parties arraigned on that particular issue? There are many men in this country who believe in Government ownership; there are very many men who do not believe in it. Just because that question is left open, from this minute on will begin the struggle to determine who is going to control that particular situation. It strikes me that that is a most serious problem and will not allow a fair determination of Government control.

I am not afraid of that question when it comes up. At present I am opposed on general principles to Government ownership of anything almost, but I am not afraid to meet it. If it is determined that Government control means the roads will be better managed under Government ownership, I should not hesitate to meet that question and vote for it; but I do not believe, with this left as an open question that Government control is going to have anything to do with settling the question on its merits. The railroad men themselves have, as suggested by somebody here, the feeling that they do not want their property taken away from them, and might not be as efficient in the control of the property left in their hands as they would be if the question were left open, and they would hardly be human if they were not governed by some such consideration. That question, since you have made your statement, has impressed itself upon me more than any other feature of this whole discussion, and I would really like your opinion on that subject.

Commissioner ANDERSON. You mean whether there is a likelihood of there being any claims in addition to the standard return?

Senator TOWNSEND. First, yes; and second, whether leaving it as an open question is not going to unsettle values and the principles upon which Government ownership will depend?

Commissioner ANDERSON. Well, as to the last, first, I answer absolutely no. You have got to face this question of Government ownership or Government control or Government regulation. I do not think that there is a sound thinking railroad lawyer or a Member of Congress who believes that you want to restore precisely the old legal status of competition between separate carriers or that you could

restore it after even a month of Federal control. Now, as to whether it would get into politics, I assume it would get into politics; but it will probably not be party politics. It will be like woman suffrage. You will have very different views and may even have pickets on you, so far as I know. It will be a matter of great public agitation as to whether you shall continue Government control, as to whether you shall turn them back to the individual corporations, as to whether you shall have unified regulation. All those questions must be thrashed out. They are problems of great moment and great difficulty. You can no more avoid them than you can avoid the storms of the winters of 1918, 1919, and 1920.

I do not at all agree with Senator Pomerene that anything I have said goes upon the assumption of success. I would not venture any prophecy here as to whether this form of Federal control that we now have is going to be a success or a failure.

Senator POMERENE. Well, then, it seems to me that if you do not go on the assumption that the plan is going to be an absolute success, your position is less tenable than if you do take that assumption.

Commissioner ANDERSON. Hear me a minute on that assumption.

Senator POMERENE. Very gladly.

Commissioner ANDERSON. I venture no prophecy as to whether it is going to be a success. If it does not work well, the advocates of Government ownership will have no prospect of getting Congress to sustain their view.

Senator GORE. They may insist it did not go far enough.

Commissioner ANDERSON. If it does work well, it may or may not make in favor of their contention. But no part of my program of keeping the present status of security for the owners and for the country until you work out another status that satisfies your conscience and judgment is based on the assumption of either success or failure under the present Federal control. It is based upon the proposition that Federal control has so changed conditions that you have got to deal with that changed condition and can not deal with it until you are able to apprehend with reasonable thoroughness and accuracy the essential facts of the change. I do not know that I can add anything else except perhaps to repeat myself as to the views that I formed as to the effect upon the security market, upon the confidence of investors, of having a time limit set.

I suppose it may be true—having never been a Member of Congress, I can not state it will be true—that a conscientious Congress, knowing that if they did not agree upon some sort of necessary constructive legislation before a time limit set, might thereby be somewhat influenced to try to agree. On the other hand, the very fact that there is such a time limit set would put a premium upon certain forces, outside of Congress at any rate, to engender strife and prevent an agreement; because there would certainly be chaos as to the condition on the part of carriers that are of the weaker kind if, say, 18 months from to-day Federal control were to end with no new laws on the books.

Senator POINDEXTER. Mr. Anderson, if a definite limit in the bill, say, six months after the end of the war, and the method of compensation remains as it is now, would not that definite time limit enter into it essentially as one of the conditions of that settlement?

The settlement would be based upon the conditions fixed by the bill, would it not?

Commissioner ANDERSON. Yes.

Senator POINDEXTER. So that if in Congress this issue that you and others have been saying is inevitable, of Government ownership, comes up, and Congress should decide upon some different system, and conclude not to turn the roads back at the time fixed in this bill, but to either retain them under Government control or under Government ownership, or to extend the control for a while, that would change the conditions under which the original settlement was made, would it not?

Senator TOWNSEND. I did not follow that out.

Senator POINDEXTER. I will make it more brief. I say, if you make a contract as contemplated in this bill with the railroads as to their compensation based upon the condition in the bill that this tenure by the Government is to be for the period of the war and six months thereafter, the railroads undoubtedly in making their settlement will be presumed to take into consideration as influencing their action that condition that the Government is to have them for a limited period and give them back at the end of that time. And you settle with them, through all of this complicated and voluminous work of arriving at agreements and valuations, and make your settlements, and then in consequence of this political issue, Congress should repeal that feature of the law and say "We will keep the roads longer; we will not turn them back at this time," that would be changing the conditions upon which the settlement was based and unsettle the settlement, and reopen the whole question.

Commissioner ANDERSON. Yes; I think that is so. I intended to bring that point out, but overlooked it. Suppose you have the bill drawn so that after the period of war, which everybody agrees is indefinite, and 12 months thereafter you should turn the properties back. You agree with Carrier A under section one to pay it on the basis of reported returns ten millions a year for the use of its property for the period provided under the bill. The contracts will all run between the United States and the common carriers, and the time limit will be fixed by these contracts. They take their ten millions a year plus such additions as might accrue under section 4; they use the United States' rolling stock provided under section 6, and part of their maturities are financed under section 7. The war ends; Congress is overwhelmed with problems, and says, "We ought to have another year to settle that problem." Have you any right under those contracts to extend the time unless the contracts are all drawn with a provision to the effect that they shall continue for the period of the war and 10 months thereafter, and for any extension thereof which may be provided by Congress? You must put that into every contract or you are thrown, just as you say, Senator, into a condition of chaos as to the respective rights of the Government and each of the carriers. You have not got a free hand to extend the time if the act says "the period of the war and 12 months thereafter."

Senator POINDEXTER. But you lose sight of the fact that we do not make our bargain when we turn them back.

Commissioner ANDERSON. You make a bargain for the use of the property.

Senator POINDEXTER. Yes; and for a definite time.

Commissioner ANDERSON. Pardon me; you can not for a definite time. You say "the time may be made definite by setting a certain time after the close of the war." But is it very definite? The newspapers one day tell us we shall be in this war for five years; this has been a not uncommon prophecy by men of great intelligence; and then we get a glimmer of hope of being out of it in three months.

Senator UNDERWOOD. Does not the thing come back, in the last analysis, outside of the contracts—which, of course, can be made under any conditions the Government and the railroads think advisable—to this: I take it some of them will not make the contract and will go to the court, and the court is going to construe whether this is a definite taking or an indefinite taking; if it is a definite taking, they will fix the just compensation at the value of the railroads, and when we pay the value of the railroad we will have it and keep it forever unless we want to sell it. On the other hand, if it is a limited taking or a taking that can be made definite, they will probably hold that the just compensation is the rental value, and we will not have to pay for the railroads that might be willing to sell out to the Government at this time.

It seems to me that is the real question we have got to face, and not something in the future, as to whether we want to permanently take them over. In other words, if we are going to believe now that we should have permanent Government ownership, is it wise for us to declare it in this bill right now without going any further—to stop the thing right now and say that we will permanently take them over forever? Or, if we do not believe in Government ownership under existing conditions, then make it so definite as to show that we do not legislate on that ground; that it is a mere temporary taking. Ought not we to determine that question right now as to whether we expect the taking to be permanent or for a limited period? Of course, we do not tie the hands of any future Congress. We do not change the status.

Commissioner ANDERSON. May I ask you a question as to part of what you said there?

Senator UNDERWOOD. Certainly.

Commissioner ANDERSON. See if I understand you. Do you think the nonagreeing carriers who come into court under section 3, with section 13 drawn as here, would be entitled to a higher rule of damages than if you had the period of the war and, say, 12 months thereafter?

Senator UNDERWOOD. Yes; I think it is probable. Of course, I do not know what the court would determine, but I think as section 13 is drawn now it is an absolute and definite taking, and the same as if we declared we should take them over forever. If a railroad went to court to sue for damages under the bill as it stands now, its lawyers would enter suit for the value of the railroad and not for rental damages, because they would decide the question on the assumption that Congress was never to turn them back, and they would want their money out of it, just as any other citizen, for the taking of its property. I think it is probable that the court would hold that just compensation would be the value of the property. On the other hand, I am sure that if we took the properties for one year the court would hold that just compensation would be a fair rental value.

Now, I think it probable that if we say for the length of the war and six months thereafter the court will still hold that that is sufficiently definite to find the damages at a just compensation for the use of the property and not for the value of the property. Of course, there are a great many of those cases that have arisen from the Civil War, cases for the taking of property—churches and storehouses and other property used by the armies during the war—and I think that the decisions of the Court of Claims along that line have been that where it was a temporary taking it was for the rental value; if it was in the nature of a permanent taking it was for the actual value.

Commissioner ANDERSON. I can hardly conceive why there should be a higher value put with section 13 as now drawn than there would be if it said "period of the war and 12 months thereafter."

Senator UNDERWOOD. I think the whole proposition turns on the question, Mr. Anderson, as to whether the language of the bill allows the court to find that there is a definite or an indefinite taking of the property. I think that is the whole question.

Commissioner ANDERSON. It seems to me you can not make a bill which is not an indefinite possession of the properties, because the war is indefinite.

Senator UNDERWOOD. The courts have held that that is definite which, in the nature of things, can be made definite, and I assume the courts will hold that, although this war may last a year, two years, or three years, possibly, it will have a definite termination. It is not a permanent taking, that the war will be over in the course of a few years, and therefore that the period of the war can make the taking a definite taking; whereas, the action of Congress—the future action of Congress, an entirely indefinite matter of fact—it seems to me as this clause 13 stands to-day in the bill we might just as well strike it out. It means just as much with it in as it does with it out. When you say "for the period of the war and when Congress shall legislate" you might strike out "the period of the war." That does not mean anything. The bill reads "until Congress shall legislate" and as Congress has the power to legislate anyhow, putting in the words "until Congress shall legislate" adds nothing to it.

Senator TOWNSEND. In other words, it might be added to any measure we pass and still not mean anything.

Senator UNDERWOOD. Yes.

Senator WATSON. The real object of this legislation is to secure more effective service by railroads, is it not?

Commissioner ANDERSON. The chief object; one other object was to stabilize the market conditions.

Senator WATSON. That was incidental. The real object was to get more effective service by the railroads than we were getting.

Commissioner ANDERSON. Yes.

Senator TOWNSEND. Will the establishment of the time limit in and of itself militate against effective service or the improvement of the service under the conditions of this bill?

Commissioner ANDERSON. I can not say that; as it occurs to me, it would have much effect either way. I should think it was pretty nearly neutral. I expect, as I told you a few minutes ago, that the men in the service are going to take hold and do the best they can to mobilize the resources of the country for war, and serve faithfully. I do not see why there should be any substantial change of

attitude whether you say "until Congress legislates" or "during the period of the war and 12 months thereafter."

Senator WATSON. Precisely. So that section 13 is not essential so far as this bill is concerned for the effective operation of the railroads during the war?

Commissioner ANDERSON. I do not think it is. Though that is only my offhand present impression. At any rate, I had not put my positive views in favor of section 13 on any matured notion that it would make any essential difference in the operation of the carriers during the war period. That was not one of my own thoughts.

Senator CUMMINS. Mr. Anderson, I want to call your attention to what might be called the practical aspect of the question, rather than the constitutional one. Such is the variety of opinion among men that, although it has not been mentioned up to this time, it seems to me to be the most important one. I do not disparage the suggestion of the Senator from Alabama, because I think there is very much to be said in favor of his legal contention; but even if the circumstances that he points out were to follow, they would have no terrors for me. This, however, must be remembered: There has been a Joint Committee of the Interstate Commerce Committees of the two Houses sitting now for considerably more than a year considering a reorganization of our system of regulation and control of carriers, embracing proposed amendments to the present law and also the movement for Government ownership—taking in the whole thing. A vast volume of testimony has been taken in that hearing, and I think it is entirely within bounds to say that there is the widest difference of opinion among members of the committees with regard to changes that have been proposed, with no immediate hope of reaching any agreement.

Now, when you consider that situation in connection with the additional problems which the temporary taking of the railroads and our relation to them and the public will create, it is fair to assume that it will be a good while before Congress will be able to agree upon the plan for the future, and in the meantime the status created by the proclamation and by this bill, if it is passed, is to continue. After the war ends, the President will have the same power over transportation for the ordinary objects of commerce and the business of the country that we propose to give him or have given him over transportation in order more successfully to prosecute the war. That would be true under this status. Do you think, Mr. Anderson, that Congress would ever contemplate for a moment giving to a single man in time of peace, for the regulation of the commerce of the country, absolute power over all the transportation of the country?

Commissioner ANDERSON. No, sir.

Senator CUMMINS. If that is true—and I think that everyone must admit that it is a sound view, and not said with reference to any particular President, because we may have a good many Presidents before this status changes—do you not think that those to whom the railway lines and the transportation lines of the country render their service have some right to be heard and some right to be considered as well as the security holders? Because, after all, they are the people who are principally interested. If, then, we are to have a presidential management and operation indefinitely in times of peace, or if that is the effect of this bill, do you not think that we

ought to provide that when peace comes the management and operation of these roads should be turned over to some proper tribunal, composed of men who have given study to the problems of transportation and who are prepared to do justice between the railroad companies and those to whom their service is rendered?

Commissioner ANDERSON. Senator, if that is not adequately covered by section 11, it ought to be. I am in absolute accord with your views that the shippers and passengers, after you get by the war period, if you ever do, are as much entitled to reasonable rates and nondiscriminating service under the new régime as they ever could be under any conceivable régime; there ought to be a service rendered under and in accordance with law, or under an official or officials bound to all the responsibilities of official standards of impartiality. But I do not think that there is much doubt—and I am not sure that there is any doubt—that that is the fair import of section 11.

Senator CUMMINS. I do not find any such provision, and it would seem to me perfectly obvious that if these roads are not to be turned back to their owners when the necessities of war shall cease, then we ought to provide that at the end of the war the Government operation shall be through an organized and a lawfully bound and directed tribunal.

Commissioner ANDERSON. You think it should be in this bill and should not await the official termination of the war?

Senator CUMMINS. No. I think so because this status we are now creating or that has been created continues until Congress agrees on something else, and Congress may not be able to agree on something else for 10 years to come or 10 years after the war. No one can tell anything about that, for I agree with you that the problems which will then confront us are not only very difficult as they are now perceived but they may become immensely more difficult on account of the conditions that may hereafter transpire.

Commissioner ANDERSON. Or they may be simplified by the result of such experience.

Senator CUMMINS. They may be simplified. All I desire to call your attention to is this view: Those who believe in Government ownership and the proper conduct of railroads in times of peace by the Government ought to be the last persons to want that experiment tried under the terms of that bill.

Commissioner ANDERSON. It may be they are.

Senator CUMMINS. At least that is the way I feel about it.

Commissioner ANDERSON. I have not even had time to read the newspapers since I have been engaged in this work, so I really know very little about what has been printed except as a little has drifted in to me now and then.

Senator POMERENE. Do you not think if it comes to a question of private ownership and private control on the one side and Government ownership and Government control on the other hand, two years hence, that the Congress then sitting will be better able to determine that question than we are to determine it now for the future?

Commissioner ANDERSON. I do. I think you will know more about it because you will have certain experience from which to draw lessons.

Senator CUMMINS. We must not only know more but if we establish this status now we must get the concurrence of the majority of each House of Congress in order to change the status.

Commissioner ANDERSON. That there are immense difficulties in the way of dealing with the problems that you must deal with under this bill as it is now drawn, with section 13, I concede instantly. All I claim for section 13 as it now is, is that it offers less difficulties and less dangers than any other course that you can mark out for yourselves.

Senator TOWNSEND. Will you not tell me this, Mr. Anderson? I have discussed this point with others outside, and I have never been able to reach any other conclusion than that one reached by the Senator from Alabama. Suppose the Congress passes a law, any law on any subject, and says it shall remain so until Congress acts otherwise. Of course that is implied in every law, is it not? There is not a law that is passed that those words could not be attached to and it would mean nothing except that the law has been passed and Congress has the right to change that law whenever it sees fit.

Now, you put those words in this. It looked to me as though all the time this was a permanent definite taking by the Government of the railroads, and that it did not change it in the least from any other status that it has.

Commissioner ANDERSON. I quite agree that most of the statutes that you pass are subject to revision and amendment. Under some statutes a right may vest that you can not take away by subsequent revision and repeal. But this is not an ordinary piece of legislation. It is taking over the use of property—one of the greatest properties in the country—for war. You may criticize it as being nothing but a declaration of policy or of legislative intent. Possibly it is. Or you may say that it is put in as an assurance to the country that, as it is proposed to treat the investing public fairly under sections 1, 2, and 3 of this bill, the shipping public fairly under section 11, it is also proposed by this declaration in section 13 to recognize that new conditions are being created requiring a subsequent Congress to deal in the same fair and intelligent way with those new conditions; that therefore you propose to continue the just and equitable conditions now established until some other Congress works out a solution of a new status satisfactory to its conscience and to its judgment. I think this provision of great value for these purposes.

Senator TOWNSEND. I have no doubt that that is what you said, but that is implied in every law, it seems to me—that it holds until Congress acts.

Commissioner ANDERSON. This is very different from the ordinary legislation. You may say it is surplusage, but it is very desirable surplusage.

Senator POINDEXTER. Mr. Anderson, it is not exactly surplusage. is it, taken in connection with the other part of that section, indicating the time that those who enacted this bill have in mind is for the war, but expressing themselves as expecting the future Congress to deal with it. That is the real effect of this expression. It seems to me it puts it in a somewhat different status—

Commissioner ANDERSON. It does.

Senator POINDEXTER. Than if it was not there at all.

Senator GORE. It does; because the President could turn it back over to them if this was not in there when the war was over.

Commissioner ANDERSON. Yes; that is true.

Senator POINDEXTER. Some reference was made to the fact, which I agree with, that the Congress when the war is over will be better able to determine the future policy in regard to this railroad question than this Congress can possibly be in attempting to look into the future, because they will be able to look at the past. Is it not true that the only way that you can save the situation intact for that Congress to deal with is by just leaving it just as it is expressed in this bill? If you fix a definite time, you fix a condition and settle the transaction with the private owners upon the basis of that definite condition, and a future Congress would have to change that if it adopts a different policy, whereas as it is now all they would need to do would be to continue in effect the settlement already made.

Commissioner ANDERSON. Yes; your mind works to the same conclusion that Judge Payne's and mine did, that this is the most neutral of all expressions that you can apply to this difficult subject matter. I have yet to hear the railroad lawyer that would advocate having the President proclaim the termination of this Federal control on the same day that peace is proclaimed or a month thereafter or three months thereafter. I have yet to hear any railroad lawyer suggest that legislation after the war is over is not absolutely essential and proper statesmanship in order to deal fairly with the public's rights and with the rights of private investors.

Senator GORE. The railroad lawyers entertain that view?

Commissioner ANDERSON. Everyone I have talked with said that legislation to end the control properly is an absolute essential. Therefore the only question left to be considered is, Will you put a stop watch on the Congress that has got to deal with the admittedly necessary legislation or will you say that the Congress then in existence will take up its duty and do it within such time as it finds itself able. That is the gist of the question.

Mr. Thom will correct me if I misunderstood him in the discussion that I had with him on that point.

Mr. PATTERSON. I think you did misunderstand him.

Commissioner ANDERSON. Then I will wait until he has his say. But no railroad lawyer with whom I have discussed that has failed to agree with me yet that legislation was essential to determine what ought to be done with them when the present status of Government control be ended.

Senator KELLOGG. You mean legislation as to whether the roads should be allowed to pool and whether the Sherman Act should apply to them and those things. You do not mean legislation fixing the terms under which we shall turn the property back.

Commissioner ANDERSON. Legislation of a broad constructive kind, dealing with the new status growing out of the changed status worked by Federal control.

Senator KELLOGG. That does not mean anything. Concretely, what legislation do you refer to?

Commissioner ANDERSON. It does mean very much. It means that the men who have been studying into this problem think that difficulties will accrue which can not now be foreseen, and therefore you can not say what legislation they should have.

Senator KELLOGG. What difficulties?

Commissioner ANDERSON. I thought I indicated a good many of them some time ago. We have difficulties as to financing, difficulties as to the disposition of the Government's rolling stock; we have difficulties as to the relations which will arise out of water competition, whether you are going to put them back under the fourth section or whether you are going to vary from the fourth section. You have difficulties as to whether you are going to allow them to pool. There are others. Suppose this, for instances: Each of these big railroad systems has hitherto maintained a traffic department engaged in getting, in competitive contest, freight away from the other carriers. There is a shortage of railroad help, and it is expected that many of those traffic-getting people will be absorbed into non-competitive and far more efficient activities during Federal control. You are going to turn the carriers back into the competitive field with no competitive personnel and no time to arrange for one.

Senator KELLOGG. Do I understand it is the policy of the Government to destroy all the traffic associations and organizations of the railroads now existing?

Commissioner ANDERSON. I can not answer that. I do not understand that to be true. But I do understand it to be the policy of unified control, particularly when there is a shortage of labor, to utilize labor where it can be utilized to produce the greatest results in the national service; that would necessarily involve some diminution in the traffic departments.

Senator KELLOGG. That does not require any legislation.

Commissioner ANDERSON. To do that?

Senator KELLOGG. Not at all.

Commissioner ANDERSON. Or to return to it?

Senator KELLOGG. No; either one.

Senator UNDERWOOD. Mr. Anderson, there is no vested right in the railroads to indulge in water competition, as I understand it. The interstate-commerce act merely gives the commission the right to allow the railroads to reduce their rates to meet water competition, and as the law stands to-day the Interstate Commerce Commission can take that right away from them, if it desires, can it not?

Commissioner ANDERSON. I think so.

Senator UNDERWOOD. Therefore they are not hurt by this law.

Commissioner ANDERSON. Legally hurt.

Senator UNDERWOOD. And can build up water competition.

Commissioner ANDERSON. Practically they are hurt.

Senator UNDERWOOD. I know, but as a legal status they are not, because the commission could take that rate away from them tomorrow if they desired to do so.

Commissioner ANDERSON. I think that is probably so.

Senator POINDEXTER. On that point I would like to ask in what way the commission has got anything to do with that? I do not understand what the Interstate Commerce Commission has to do with that.

Senator UNDERWOOD. As I understand it, the interstate-commerce law from the beginning has provided in fixing uniform rates that where there is water competition the railroad may be allowed to reduce its rate at the point of water competition to meet the water competition, but it is not a definite right that is given to the railroads.

It rests in the discretion of the commission as to whether they will allow it. As a matter of fact the commission has allowed it in the past, but it could take it away to-morrow if it changed its policy on that subject.

Senator POINDEXTER. I do not think the law says anything about allowing them to reduce rates to meet the water competition. The provision of the law is that they shall not charge more for a short haul over the same line in the same direction than for a long haul; that they may take into consideration different conditions that exist.

Senator UNDERWOOD. I am not quoting the language accurately, but the substance of it is that the commission, under the language that is used in the act, has allowed them to reduce rates to meet water competition.

Senator POINDEXTER. Rather what they have allowed them to do is at the other end. They have allowed them to raise rates at the interior points.

Senator UNDERWOOD. Assuming that the rates at the interior points are the fixed points, they have allowed them to reduce the rate to the water rate, and I have no question but that is in the discretion of the commission and can be taken away any time they desire.

Commissioner ANDERSON. I do not think that discussion accurately defines it. It is the latter part of section 4.

Senator UNDERWOOD. I think that is a later enactment than the one I referred to. In the original enactment of the law I think you will find that the right to reduce rates to meet water competition was given in the discretion of the commission, and at a later date the statute was enacted which you have just referred to, which provided that in case they did reduce rates, that they should not raise them again without going to the commission.

Senator CUMMINS. The statute says, after making the general prohibition, that in special cases the commission may relieve the carrier of that prohibition when the public interest requires it. That is the substance of it.

Commissioner ANDERSON (reading):

*Provided, however, That on application to the Interstate Commerce Commission such common carrier may in special cases ask that such investigation be authorized by the commission to charge less for shorter distances * * * and the commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section.*

That is the language you had in mind, Senator?

Senator CUMMINS. Yes.

Senator UNDERWOOD. The point I had in mind was not on that language, it was a matter that recited in the discretion of the commission and was not a vested right that belonged to the railroads.

Senator KELLOGG. I would like to ask one other question. Referring to section 11, do you think section 11 is broad enough to confirm in the States, if any confirmation is needed, the right to tax all railroad property as it is now being taxed by the States? I take it it is not the intention, because this property is in Government hands for operation, to deprive the States of the right of taxing the property situated in several States.

Commissioner ANDERSON. No; it is not. I do not know that section 11 has any direct bearing on that point. My view is that the

power of the States to tax the property continued in the absence of something which expressly or by necessary implication cut it off.

Senator KELLOGG. Have you looked into that to see whether that is a fact?

Commissioner ANDERSON. We have had some discussion of it; yes. There has been quite a little discussion. I submitted a memorandum of some questions to our chief counsel, on January 8, and had his opinion on it with some citations.

Senator KELLOGG. Have you got that with you?

Commissioner ANDERSON. Yes.

Senator KELLOGG. Is it in shape so you would like to put it in the record?

Commissioner ANDERSON. I would like to ask Gov. Folk whether he wants to elaborate it? It was made, I think, under some pressure from me. He reached a conclusion that it was not going to effect the States' right to tax unless they undertook something which was obviously an attempt to encroach upon Federal control. I will read part of it, and then if the governor wants to elaborate it and make it more formal, if it is going to have such a permanent existence, I think he ought to have that opportunity.

The CHAIRMAN. I think that question is of such importance that your opinion on that ought to be put in such form as you desire it.

Senator KELLOGG. I suggest that you get the final opinion with authorities and submit it if that coincides with the chairman's views.

The CHAIRMAN. Yes.

Commissioner ANDERSON. I will do that. I will say now that any doubts which I had—I did not have any substantial doubts—were fully resolved, that we were not interfering with any normal and proper exercise of the taxing rights by the States, by anything herein contained. But I wanted an assurance based upon an examination of the cases, and got it from our chief counsel.

Senator POINDEXTER. What effect does it have on Federal taxes?

Commissioner ANDERSON. None, in my opinion.

Senator POINDEXTER. It would be like the Government taxing itself, would it not?

Commissioner ANDERSON. No, sir; because if you will look under section 1, any Federal taxes which were not in force in the year ending June 30, 1917, will go against the standard return and not against the operating expenses. So that any additional taxes imposed by the Federal Government upon carriers pending Federal control comes out of the security holders, directly or indirectly.

Senator GORE. That raises the question again as to whether this is Government money, the receipts from freight and passengers. If it is Government money, it is taxed on the Government.

Senator KELLOGG. If you will pardon me, Senator, I would like to make an explanation there. I think that Mr. Anderson explained under section 1—or somebody did, I do not remember who—the provision is that any net railway operating income in excess of such standard return shall be the property of the United States, and that the money while it is being earned and paid out for wages goes into the railroad treasury in the usual way, and is not Government money in such a way that it has got to be paid into the treasury and appropriated out to pay the men by an act of Congress.

Commissioner ANDERSON. I am inclined to think that is true; yes.

Senator ROBINSON. What would be the effect of this act upon State laws passed under the police power? For instance, take the Jim Crow law.

Commissioner ANDERSON. I think I should take refuge under the generalization that I made this morning, that I think any local laws which do not materially affect the Government control and are within the police power are valid.

Senator ROBINSON. I think that is true.

Commissioner ANDERSON. But I do not want to go into any finer distinctions. I am not ready to say that the Massachusetts Public Service Commission can not make a train stop at my station.

Senator ROBINSON. A number of those things are liable to arise.

Senator CUMMINS. If the President should say that the efficiency of the railroad required that the train should not stop at that station, I assume you would agree that the State commission could not make it stop?

Commissioner ANDERSON. I think I should—during the war. But when it comes to a time of peace, Senator, I should have very strong sympathy with your view.

Senator CUMMINS. But if the President should say there should be no discrimination on account of color in the make up of trains and the persons who ride upon them, I assume that would be a controlling order.

Senator TOWNSEND. The States do not legislate discrimination on account of color; they provide separate and equal accommodations.

Senator CUMMINS. Then I will have to withdraw that. In other words, the President could say that no superior accommodations should be given to the colored people and they should be compelled to ride in the same coaches with the white people, and that would be a valid order.

Senator POINDEXTER. Speaking of that conflict between the President and the local authorities and the railroad corporations, what is to be taken over under this act, the railroad corporations or just the property of the railroad corporations?

Commissioner ANDERSON. We had a great deal of discussion about that and used the language of your act, which says, "take the possession, control, and use of certain systems of transportation." We were modestly of the opinion that we did not know any more than Congress did when it passed that act.

Senator CUMMINS. Nobody ever agreed when that act was passed that it was to be put to any such use as this.

Commissioner ANDERSON. I think it is a safe refuge for a lawyer when he is doing something under a statute to cite the words of the statute. I have taken to that refuge.

Senator WATSON. It is pretty good practice.

Senator POINDEXTER. It is a pretty safe practice.

Commissioner ANDERSON. But to answer your question fully, when you honor me by asking for my own views, we came to the conclusion—Judge Paine and I are probably the chief ones on the "we"—that that language meant what I have stated here, that the carrier money is Government money, that the carrier employees are, for certain purposes, at any rate, Federal employees, that you could not take the "possession, control, and use" of the greatest going business

in the United States without having both the power to discharge and employ employees and the control of the receipts and the disbursements of the business.

Senator POINDEXTER. In addition to that, on that theory, the Government would have the right to determine what sort of safety appliances would be used?

Commissioner ANDERSON. Probably.

Senator POINDEXTER. The type and character of locomotives, the number of trainmen upon a train, the kind of cars that we use, would it not?

Commissioner ANDERSON. In theory, yes. At any rate, it could do any of those things if those things were essential to the reasonable "possession, use, and control" of this transportation system as a Government agency.

Senator POINDEXTER. Then, if that is the case, how are you going to make the railroad corporation liable for the consequences of the Government operation? Suppose a man is injured or a shipment of goods is lost, as I understand, under section 11, the intention of the framers of the bill was that the railroad corporation should be liable for it. How can they be liable when they have nothing to do, no authority or power over the operation of the road?

Commissioner ANDERSON. They are made liable by the act of Congress. I do not know any reason or constitutional bar to your saying that a suit against John Smith may be brought against Tom Jones, who is his agent.

Senator GORE. I think that can be.

Commissioner ANDERSON. And that the judgment shall go against Smith's property. It is a pure question of machinery for reaching human rights. Now, here are a lot of corporations; they are Government agents, public agents, in the language of the Supreme Court. You have authorized the taking of the possession, control, and use of their property and, for all I know, of them. At any rate, the President has undertaken to adopt them as quasi agents. I am not sure that "agents" is the proper word. I undertook to carry forward in this bill what it set forth in the proclamation—the theory that as a practical matter the right of the injured passenger to damages, or of the injured shipper to be paid something which should be charged against the operating expenses of that carrier system, should be enforced by allowing them to bring suits as of yore against that "agent," get a judgment—do everything except levy an execution which might interfere with the carrier property.

Senator WATSON. Under Commissioner Anderson's theory the Government would be compelled to, because the carrier's money is the Government's money.

Commissioner ANDERSON. It is.

Senator WATSON. Then the Government would have to pay the judgment.

Commissioner ANDERSON. You could provide machinery to get that judgment through the Court of Claims, but you might not appropriate money to satisfy their judgments. This is simply a new piece of legal machinery for determining the method by which injured passengers or shippers shall get the money to which they are entitled.

Senator KELLOGG. On that point I think you are right.

As you are going to accede to a redraft of that bill, I would suggest that there are in the States statutes varying in form as to the liability of the railroads for fires, damage to property and individuals. There are rights granted to railroads under State laws of condemnation of property, which condemnation proceedings are now going on in many of them, and it may be necessary to prosecute them in the future.

There are various railway commissions in the States with regulatory powers, such as powers to compel the railroads to construct stations, Y's, and connections. There is also the power to fix rates. Why not have a general provision in the statute that will continue the powers of the corporation through which the Government has got to act in the management of the physical property? The Government has got to use corporate powers. The corporations have got to keep up their boards of directors and officers and perform many acts under the laws of the States. They have to file returns and pay taxes and a great many things. Why not have some comprehensive provision that these laws, these rights, and these remedies shall not only exist, but the rights of the corporations may be enforced under the State laws now existing. There is only one complication that may be guarded against, and that is the power of fixing rates. As it is now existing, of course the States, through their commissions, fix rates, and if they fix a rate, a noncompensatory or a confiscatory rate, as we call it, the Federal court might, on the suit of the railroad company, enjoin the rate. That may be necessary, too, and there should be some power to act on that question. Generally speaking, all these rights can be preserved and the remedies continued in Government operation, because that is the machinery you have got to use.

The CHAIRMAN. And not leave them the subject of an order of the controller general, who, by virtue of this bill, may be in control of the railroads.

Senator GORE. They should be made stable.

Commissioner ANDERSON. That is what we have undertaken to do. If we failed to do it, we want to complete the undertaking. The proclamation provides:

Until and except so far as said director shall from time to time by general or special orders otherwise provide, the boards of directors, receivers, officers, and employees of the various transportation systems shall continue the operation thereof in the usual and ordinary course of the business of common carriers in the names of their respective companies.

Until and except so far as said director shall from time to time otherwise by general or special orders determine, such systems of transportation shall remain subject to all existing statutes and orders of the Interstate Commerce Commission and to all statutes and orders of regulating commissions of the various States in which said systems or any part thereof may be situated. But any orders, general or special, hereafter made by said director shall have paramount authority and be obeyed as such.

Senator KELLOGG. That is the proclamation; that is not the law.

Commissioner ANDERSON. Let me continue for a moment. Further on the proclamation says:

Except with the prior written assent of said director, no attachment or mesne process or execution shall be levied on or against any of the property used by any of said transportation systems in the conduct of their business as common carriers; but suits may be brought by and against said carriers and judgments rendered as hitherto until and except so far as said director may by general or special orders otherwise determine.

Senator KELLOGG. You are talking about the proclamation.

Commissioner ANDERSON. I am telling you what we undertook to deal with in the act. It is just exactly as you say. There was not a particle of difference between the opinion that we held and the opinions that you have expressed.

In section 11 of the bill we say:

The carriers while under Federal control shall, in so far as is not inconsistent therewith, or with the provisions of this act or any other act applicable to such Federal control, or with any order of the President, be subject to all laws and liabilities as common carriers—

You might say there “Federal or State laws”—

and suits may be brought by and against such carriers and judgments rendered as now provided by law: *Provided, however*, That except with the written assent of the President, no attachment shall be levied by mesne process or execution on or against any of the property used by any such carrier in the performance of its duties as a common carrier.

Now, if that section does not effectuate your purpose, which is exactly our purpose, we would be delighted to have it restated, because we have the same purpose and desire you have.

Senator UNDERWOOD. Haven't you limited the action of the section by reason of the President's already having issued an order? That states that existing rates shall hold. Therefore, it takes away from the Federal commission or the State commission the power to change rates. He has adopted that in his proclamation. He has made the existing rate the rate. If he had not issued that order they might go ahead under your bill.

The CHAIRMAN. In other words, no modification can come until he modifies this by subsequent proclamation.

Commissioner ANDERSON. I do not think I quite get that.

Senator UNDERWOOD. You say in your bill that no changes shall be made except under certain terms or by the order of the President. The President has made an order fixing the status, and nobody can change that until he makes another order.

Commissioner ANDERSON. I do not think you are correct in stating that he has made an order, unless you mean by that—

Senator UNDERWOOD. I am referring to the proclamation.

Commissioner ANDERSON. The proclamation says that the carrier shall remain subject to all existing statutes and orders of the Interstate Commerce Commission and to all statutes and orders of regulating commissions until and except so far as said director shall from time to time by general or special orders otherwise provide. I do not think he has made any order fixing rates. I have heard that from some other source, but I never did understand the foundation for it.

Senator GORE. Would a State or Federal commission have a right to change rates?

Senator UNDERWOOD. Was it not in order No. 1 that he said the carriers should be governed by existing rates?

Commissioner ANDERSON. I have forgotten. I drew order No. 1.

Senator UNDERWOOD. I think you will find that to be the case. He said the carriers should be governed by the existing schedule of rates. That fixed the existing schedule of rates as a basis until he changes it.

Commissioner ANDERSON. Very likely you are correct about that. I had forgotten for the moment. I know that in No. 1, with which I had to do—I have had nothing to do with most of the later orders.

for reasons which you can understand—there was an express provision taking away from the shippers the right to select their own routes as being necessary for efficiency. There was an express order made to people in charge of transportation that they should route by the nearest direct and available route, without regard to who got the profits therefrom. There was something else which ran right across some existing statute or order, it being a modification that was necessary under the unified and coordinated control.

Senator UNDERWOOD. It struck me that in that order he had adopted as a basis for the Government to work on a system of rates and had taken away power from the local commissions or Federal commission to change them as long as that order stood. I think that is the existing status.

Commissioner ANDERSON. There is no doubt that the Federal control vests rate-making power in the President. There is also no doubt that it is the intent, so far as possible, not to make arbitrary, unnotified, and unnecessary changes; and it is also the intent to utilize, so far as practicable, both the Interstate Commerce Commission and the State commissions in working out an orderly and satisfactory status under the new régime.

Senator UNDERWOOD. If the railroads are taken over and put under Government control, either temporarily or permanently, two Governments can not operate in the same sphere at the same time about the same subject matter.

Commissioner ANDERSON. We have been trying it for over a hundred years and have had more or less trouble.

Senator UNDERWOOD. When we take them over, of course, that eliminates State control, except so far as the Federal Government allows it to be exercised.

Commissioner ANDERSON. The Shreveport cases were very difficult cases. The Shreveport decisions, as they have come to be called, involve exceedingly close and difficult questions. As long as we have a complicated system of Federal and State laws we shall always have those questions. That is the price we have to pay for getting the benefits of local control.

By that I do not mean to imply that I am not a hearty believer in State rights, because I am. But I do mean to say that every practical man is constantly brought to an appreciation of the infinite difficulty of reconciling conflicting rights in the twilight zone.

Senator KELLOGG. Do you believe in State rights?

Commissioner ANDERSON. Yes, sir.

Senator CUMMINS. There is some information that pertains to section 1 that I feel I must have in order to reach a just conclusion about it. I am referring now to the phrase "systems of transportation" in the act of 1916 and again in this act. It has two aspects. One relates to the power of the President to take over certain property; the other relates to the manner of reaching a standard of return.

Now, as to the first. There is a railroad in my State, not a very large one, but a very important one, which was organized in the usual way. It is not the result of any combination or consolidation of separate roads. Its representatives came to Washington and they wanted to know of me whether it had been taken over by the President. I told them the best way to find out was to go to Mr. AcAdoo or to Judge Payne or to some one who was administering the procla-

mation. They did, and the first thing that met them was a doubt as to whether a road of that kind could be called a system of transportation, and, therefore, a doubt with regard to whether that particular road was within or under Federal control and in Federal possession or not. I suppose your opinion upon that, if you have any at this time, could hardly govern the situation, but I call your attention to it in order that you may think about it, and if that phrase, as used in the act of 1916, and as necessarily used in the proclamation, does not cover a road, a single road that has no other relation with any other railroad property, except taking persons and property in the course of transportation from it and delivering them at some other point, it may unquestionably be brought within the President's power, because it would be ruinous to this country to have the Government in possession of the chief lines and leave out these other smaller roads, which may be called not parts of any system, as we ordinarily use that word.

Senator POINDEXTER. Senator, do you have any objection to describing that road so as to give us an idea what it is?

Senator CUMMINS. As to that particular road, I shall put aside the question of its being an interurban road. I will assume it is an interurban road. It is an electric road used for the purpose of carrying freight. Its chief lines run from Waterloo, in Iowa, to Cedar Falls—from Waterloo to Cedar Falls, and I believe, to Cedar Rapids.

It takes freight, all that it can take. A large part of its business is freight. It is not a very large road, but it makes its connections at either end with transcontinental lines. Of course, it operates its own road; it has its own engines; it has its own cars and motor power. The motor power is electricity, but that, I take it, makes no difference. The point is whether such a road, no matter whether it is operated by steam or electricity, constitutes a system.

Commissioner ANDERSON. I do not think that I should say anything about it, if that case has been heard by someone who has gone into the facts and undertaken to determine on the facts whether it is a system within the meaning of your former act. I certainly should not express any opinion.

Senator CUMMINS. I think that is correct, but if there is any doubt about the meaning of the word "system" as used in the act of 1916, we should at this time remove the doubt and confer upon the President the power to take such property.

Commissioner ANDERSON. Without undertaking to prejudge the case, I should not hesitate to say how I would rule if I found a case where I needed any part of a carrier for the public interest, or found that I had exercised a power in such way that if I did not include another piece of a carrier system I should leave some people unjustly treated.

Senator CUMMINS. We could easily enlarge or make it clear under the act of 1916.

Commissioner ANDERSON. The present act is, in my opinion, broad enough in its provisions so that the President may take possession and assume control of any system or systems of transportation, or any part thereof. As I take it, those words are all-inclusive.

Senator CUMMINS. This particular road is not a part of any system.

Commissioner ANDERSON. Do you use "system" in a technical sense?

Senator CUMMINS. It is a part of the railway system of the United States, of course, and that is what created the doubt with regard to the meaning of the word "system." It is used in so many different senses. I suggest to you—in fact, I make it a request—if you can find it convenient to confer with Judge Payne upon that subject, that you do so, and if there is any doubt which has been reported to you I would be glad if you would inform the committee, so that we can take care of those properties which, otherwise, would simply be destroyed in the conflict between the operation of other lines—the individual operation of these lines.

Commissioner ANDERSON. I wonder if section 10 is not broad enough to meet that point:

That nothing herein contained shall be construed as modifying or restricting the powers heretofore conferred upon the President to take possession and assume control of any or all systems of transportation; and the President, in addition to the powers conferred by this act, shall have, and is hereby given, certain other and further powers necessary or appropriate to give effect to the powers herein and heretofore conferred.

Senator CUMMINS. After all, it comes back to the proper definition of the word.

Senator TOWNSEND. What is your definition?

Senator CUMMINS. There is no definition unless you pay close attention to the context in which it may be used. We speak of a system of railways in the United States with entire accuracy. We speak of the Pennsylvania system with equal accuracy, or the Union Pacific system, but just where the word ceases to apply to an individual road I am unable to say.

Commissioner ANDERSON. I rather think that is broad enough to cover it. Here it says transportation systems or parts thereof. I do not see how you could use broader language than that.

Senator CUMMINS. If this refers to the transportation system of the United States as a whole you are right, but if the word "system" is applied to a particular part—to two or more roads—I do not know how to interpret it. I am sure we all want to reach the same result, and I wish you would inquire into that particular matter.

Commissioner ANDERSON. I think it is Judge Payne's view. We worked over that together, and his idea was precisely the same as mine.

Senator CUMMINS. He did not express any opinion about it. I simply say that these representatives were met with doubt respecting the matter, and it could not therefore be settled.

Now, I turn your attention to the words "systems of transportation," as affecting the standard return of carriers, and to do so I will take a particular road. There is no doubt, for instance, that the term "system of transportation" would apply to the Union Pacific Railway Co., is there?

Commissioner ANDERSON. No.

Senator CUMMINS. Now, the Oregon Short Line—I take this as an illustration—is operated independently, or, in a sense, independently. The Union Pacific being an owner of substantially all the stock and possibly the bonds, too, of the Oregon Short Line, when you come to compute the standard return for the Union Pacific Railroad Co.,

what effect do you give to the relation of the Oregon Short Line and the Union Pacific?

Commissioner ANDERSON. Does it make separate returns to the Interstate Commerce Commission showing its own operation?

Senator CUMMINS. I think it does. I am not positive, but I am quite sure it does.

Mr. THOM. They are operated separately and make separate returns.

Senator CUMMINS. Every road is operated separately that is not owned or leased to some parent company. The relation which exists between the Oregon Short Line and the Union Pacific is rather a common one in the railroad situation.

Mr. THOM. But there are roads which are not merged with others where the operating results are all treated as if they were the operating results of a single company.

Senator CUMMINS. That is a difficulty. I do not know how anyone, by simply employing the language of the bill, can positively tell what the standard return is. If you take the Union Pacific Railroad, you find that it makes a separate return. You arrive at its operating income and finally at its net operating income. Will you tell the committee what influence the money that is paid either in dividends or interest by the Oregon Short Line to the Union Pacific Railroad Co. has in the net operating income of the Union Pacific?

Commissioner ANDERSON. Well, if I understand your statement of fact, it has none whatever. Let me illustrate by a road that I do know something about. Take the New Haven system. The New Haven system includes a lot of leased roads—besides many consolidated into one company years ago. Then it owns all, or substantially all, of the stock of the Central Railroad of New England. That road is a separately operated road and makes separate returns of its operating income and expenses. As the New Haven owns substantially all its stock, the dividends paid by it go into the New Haven's treasury. The "standard return" of the New Haven figured under section 1 would not include any of the earnings of the Central Railroad of New England, nor would it make any difference in the amount of the standard return that the New Haven receives dividends on the Central's stock. In other words, they are independent carriers, so far as this bill is concerned, and the bill does not undertake to deal with the investments of an operating carrier whether in other operating carriers or in outside properties.

Senator CUMMINS. So that in reckoning the standard return in section one of the bill, the money which all the railroads receive from their investments in the stock or bonds of other railroad companies is not taken into consideration at all.

Commissioner ANDERSON. That is right. I can give you from these figures some illustrations if you care for them, but I think you have the point clearly in mind now.

Senator CUMMINS. That general statement, I think, will clear it up, and it will make it easy to apply a rule in that regard. That being true, I want to call your attention to another feature of the standard return. You know that during the last 25 years or more the railroads of the country, the good railroads of the country, they might be called—I think you called them the dividend payers—have

annually collected from the people a sum not only sufficient to operate and maintain the roads and pay interest upon their debts, and to pay dividends upon the stock, but they have collected enough to enable them to add to their roads in the way of betterments, extensions, and additions. Those amounts are properly chargeable to capital account. Without inquiring just at this moment into the aggregate sum that has been so collected through rates and which has gone into the betterment and enlargement of the properties, do you know whether there has been during all that time an insistence upon the part of certain economists as well as people who were financially interested in the matter, that for the additions to the value of the property which have been made out of these earnings, the railroads were not entitled to thereafter take from the public through rates imposed upon the people amounts that would return a reward upon this additional value to the property. You have been cognizant of that?

Commissioner ANDERSON. I have been in that fight for 25 years.

Senator CUMMINS. You know of that struggle?

Commissioner ANDERSON. Yes, sir.

Senator CUMMINS. You know that the Interstate Commerce Commission—and I am not speaking disrespectfully—has been on both sides of that question and probably is now on neither side. [Laughter.]

Senator GORE. Senator, do you know how that would average?

Senator CUMMINS. Do you know that the Supreme Court of the United States, when it was called upon to consider it, recognizing it to be a question that might well be disputed, reserved it for future determination in a case that would more directly involve it? In that situation, Mr. Anderson, why have those who drew this bill attempted to settle that question now by legislation and to provide that these additions to property out of earnings shall be paid for in the standard returns; that the standard returns shall be increased by the amount necessary to make a proper reward upon the additions to capital out of the earnings of the property?

Commissioner ANDERSON. I am very glad that you raised that question because I forgot it in my statement to the committee. I debated that pro and con as to whether it would be deemed to settle that question or prejudice what I regard as the ultimate just decision of that question. I hold your view. I was of the opinion that it would not. I am not free from doubt on that point. If you or any other sound-thinking man thinks that provision in section 4 is going to commit the American Congress or the American people to a proposition that we should furnish our public-utility companies not only a fair return on capital that they get from the investors but a return on that part of the capital and part furnished, I would never stand for it. I have been in that fight for 20 years, and I am not going to give it up now that I have been drafted into the national service. If that is the fair import, or the necessary or reasonable import, of that provision in section 4, I repudiate it. I do not think, however, that it is. I think this is a provision for war financing; that it is a war measure which should not prejudice the ultimate, just decision of that question. But if it is not that, I repudiate it.

Senator CUMMINS. At least all doubt should be removed from it by deducting the sums of money which have heretofore been taken from earnings and invested in additions and extensions and given to the Government, allowing the Government to invest, if it was found necessary; and leave the matter to be disposed of in the future according to the policy of other sections of the bill.

Commissioner ANDERSON. May be that is the way out of it. I will say, by the way, Senator, that I will send you, by way of retort or revenge, an article that I wrote on that subject, in which I came to the conclusion that the chief source of that difficulty had been failure of Congress to legislate, so that it was more of a legislative fault than a judicial fault.

Senator CUMMINS. I think you are right about that. I think it has been largely legislative negligence or dereliction, but knowing, as I did, in a general way, your views upon the question, I was rather astonished to find in this bill what I regarded as a direct recognition or, rather, a direct repudiation of the principle.

Section 4 says that the return of any carrier shall be increased by an amount reckoned at a rate per cent to be fixed by the President upon the cost of any additions and improvements made while under Federal control, with the approval of the President, to the property of any carrier, and paid for by such carrier from its own capital or surplus.

Commissioner ANDERSON. Yes.

Senator CUMMINS. There can be no doubt with regard to the effect of that section, so far as I looked at it.

Commissioner ANDERSON. There can be no doubt that you want to get the owners of this surplus revenue to use that surplus under the existing Federal statutes for additions and improvements—

Senator CUMMINS. If the standard return to these companies that have paid reasonable dividends in the past is reduced by the average amounts which during these three years that have been taken as a standard have been taken from your earnings and invested in this property, then the Government can take the surplus, the excess, and can use it in enlarging and adding to the property, and then when we come to turn the property back, if we ever do, we can establish the status which those additions and betterments shall bear to the rates thereafter to be charged.

Commissioner ANDERSON. Do you mean by that that the Government can take from the carriers receiving standard returns all that standard return, except the regular dividends, without paying a return on it?

Senator CUMMINS. I mean this. It is entirely a question of whether the carriers will accept the offer or not, but I mean that we can fix as a standard return for those railroads their net operating income less, for these three years, the amounts they have invested from their earnings, and in this way we will not have paid to them during the years of occupation that sum of money, and we can invest it in the properties, if it seems wise, and at the end of this time settle the question in the way some people insist it shall be settled. We can give the property to them and let them charge accordingly. If, on the contrary, we believe it wise and just that these additions shall be for the public use or that the public shall

have beneficial use of those additions without paying in the future for them, we can so arrange. That is no injustice to them.

Commissioner ANDERSON. If I get your point, you would take the surplus and dividends—the surplus accruing from year to year—and throw them into a trust fund, the ultimate disposition of which would await the further act of Congress?

Senator CUMMINS. No. That might be the ultimate effect, but my point is that the standard return would be reduced by so much?

Senator KELLOGG. By how much? I do not understand.

Senator CUMMINS. Suppose in the case of a given railroad the average, so far as betterments are concerned—

Senator KELLOGG. You mean in the last three years?

Senator CUMMINS. Yes; in the last three years. Suppose it amounted to a million dollars. We would reduce the so-called standard return by a million dollars. We would give or charge the same rates and accumulate that surplus, but it would belong to the Government, and the Government could use it in making necessary additions to the property, and when the roads were turned back provision could be made so that in the future you should not be required to pay interest on that million dollars.

Senator KELLOGG. To illustrate it, let us say that the roads in the last three years have earned an average of \$950,000,000 a year. Suppose they put \$300,000,000 a year into property. You would deduct that and give them a standard return of \$650,000,000?

Senator CUMMINS. Yes, sir; that is the effect of it. That would apply only to those roads that had—

Commissioner ANDERSON. Let me see if I understand you. On the standard return, as figured by our accountants, under section 1, as it now stands, all the carriers would receive about \$935,000,000. The Federal excess taxes out of that will be not less than \$50,000,000 and not more than \$90,000,000. Call it \$70,000,000. That would leave \$865,000,000. The interest on ten billion and odd of debts is now running, or did for the last year—1916—at about 4.34. Call it 4½. That gives you a round figure of \$450,000,000 for interest on the outstanding debts. That will leave you \$415,000,000 of money applicable to dividends and surplus. That is a pretty rough estimate, but it is somewhere near right.

Senator CUMMINS. How much?

Commissioner ANDERSON. \$415,000,000.

The actual dividends paid last year were \$300,000,000 and odd. Let us call it \$350,000,000 for the purpose of the present illustration. That would leave \$65,000,000 which would go to surplus.

Senator KELLOGG. They have put more than \$65,000,000 in the property. They would then take out what they put into the property and put that into dividends.

Senator CUMMINS. I think it was more than \$65,000,000.

Senator KELLOGG. So that the standard dividend would be cut down.

Senator CUMMINS. No; the standard dividend would not be cut down, because Mr. Anderson is referring to the railroad situation as a whole. I am referring only to those railroads which have, in the last three years or more, declared and paid what is an adequate

divident to reward their capital obligations. There are a great many railroads that have not done so. They put their earnings into their property, but they have been put in at the expense of making a return upon the capital.

Commissioner ANDERSON. I remember dimly a report in the evidence in the 15 Per Cent Case that the 38 carriers, the chief carriers in the eastern district made, last year, I think it was—however, it is immaterial whether I have the date right—the report, as I remember it, showed \$125,000,000 in dividends, and about a like amount of surplus put back into their property. It was about one to one, “the Pennsylvania standard,” of which we have heard for many years. It is “a dollar to the stockholders and a dollar to the property.” What would you do with the “dollar to the property” on “the Pennsylvania standard?”

Senator CUMMINS. I am not suggesting that the railroads in operation ought not to collect from their service more than just sufficient to pay the interest upon their debts and the dividends upon their stock. I am suggesting that if they do collect more than enough to maintain themselves and pay a proper reward upon their capital, and they take that surplus and put it into their property, thereby rendering it more valuable, that they must not charge the people in the future rates that will return interest on dividends upon that increase. That is the point.

Commissioner ANDERSON. I agree with you exactly, but what I am trying to get at is how to fix it in this bill.

Senator CUMMINS. It can be fixed, I think. It can be described without much trouble, but I would not want simply extemporaneously to recite a form of amendment that would bring about that result. Having due regard to the terminology of the commission, to which we must refer, it would not be difficult, I think, to say that the standard return for roads which have declared and paid adequate dividends upon their stock should be reduced, or should be the standard return provided for here, less the amount which they have invested in property, and coming from these new sources, and that, to me, would go right to the point. It would leave, assuming that the rates are the same and the business is the same, in the hands of the Government, that surplus which has been heretofore in the hands of the company, leaving the Government free to invest it in such additions to the property as the Government may see fit.

Commissioner ANDERSON. Would you make it Government property or hold it in trust for that carrier?

Senator CUMMINS. I would do that exactly as you propose with the other relations—leave it to be disposed of according to the justice of Congress in the future.

The CHAIRMAN. Mr. Anderson, you are through with your testimony; that is, as far as discussion of the bill is concerned?

Commissioner ANDERSON. I have been wishing for many hours that you would invite me to be through.

The CHAIRMAN. I presume the committee is through, and as the hour for adjournment has arrived, I want to call the committee into an executive session.

Senator GORE. There is a question I would like to ask unless Commissioner Anderson is going to be here again.

The CHAIRMAN. The committee may at any time call Commissioner Anderson, and it probably will call him later with a view to a further modification of the bill.

Commissioner ANDERSON. I am not satisfied with section 1, myself. I do not know that I am satisfied with section 4. I want to look it all over again.

Senator GORE. If Commissioner Anderson is coming back, I would rather defer my questions.

The CHAIRMAN. He will be back again sometime.

(Thereupon, at 5 o'clock p. m., the committee went into executive session.)

GOVERNMENTAL CONTROL AND OPERATION OF RAILROADS.

TUESDAY, JANUARY 15, 1918.

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE COMMERCE,
Washington, D. C.

The committee met, pursuant to adjournment, at 10.30 o'clock a. m., Senator Ellison D. Smith (chairman) presiding.

The CHAIRMAN. The committee will come to order. Mr. Robinson, you represent the short lines. Will you give the committee your official connection with your road, also your address, and your full name?

Senator POMERENE. And the full name of the road, too.

STATEMENT OF BIRD M. ROBINSON, RECEIVER OF THE TENNESSEE RAILWAY CO., TENNESSEE.

Mr. ROBINSON. My name is Bird M. Robinson. I nominally reside in Washington. I am receiver of the Tennessee Railway Co., a line located in the State of Tennessee.

Senator POMERENE. Give its terminals, please.

Mr. ROBINSON. The original point of the road is at Oneida, Tenn., on the Cincinnati, New Orleans & Texas Pacific Railway, and runs east and south into a very large coal and timber field, without any definite terminus, as the line is still under construction. I am president of the American Short Line Railroad Association, formerly the Short Line Railroad Association of the South. That association has 130 members, consisting of that number of railroad companies located largely south of the Potomac and Ohio Rivers, including Missouri, Oklahoma, and Texas.

The CHAIRMAN. Will you suspend just a minute? I have just received a message from the Sergeant at Arms of the Senate that we are requested to go over at once, and the committee will stand recessed for 20 minutes.

(Recess was taken for 20 minutes and reconvened at the expiration of that time.)

The CHAIRMAN. Mr. Robinson, you may proceed.

Mr. ROBINSON. In addition to speaking for the members of the American Short Line Railroad Association, I will attempt to speak in a general way for the weaker lines throughout the country, regarding that as the subject that the Congress has before it, rather than the question of a short line in mileage. We are of the opinion that a line may be short in income and earnings, although it may have a longer

track. There are some 600 or 700—I think we can make a list of 800—lines that might be called short lines in the country. A majority of them report to the Interstate Commerce Commission, but there are some of them that do not.

Therefore the records as to those lines at large can not be always clearly presented, but we have prepared such information for the committee and for Congress as we could. I have had a table prepared by the Bureau of Railway Economics showing the condition of 115 of the members of my association, the object being to show not only the condition of the individual lines, but to show the aggregates, so that our interests may not be pushed aside; and it is said, "Oh, well, that is a small matter, and Congress can not attend to that." We want to show that in the aggregate it amounts to a considerable sum. The total mileage of the lines as shown by this table—and, if the members care to have it, I have copies for distribution—which includes 115 members, is 5,929 miles. The total property investment is \$155,364,000.

The CHAIRMAN. You are speaking now of the short lines, and not including what you said a moment ago, the weaker roads?

Mr. ROBINSON. I am speaking now of this list of 115 members of the American Short Line Railroad Association. The capital stock of those lines aggregates \$103,000,000. I will just treat it in round numbers. The funded debt is \$75,000,000. The total operating revenue for 1916 is \$15,826,000. The net operating income for 1916 is \$2,462,000. The return on the investment for 1916 is 1.58 per cent. The return on the funded debt is 3.33 per cent. We selected the year 1916 for the purpose of making this table, for the special reason that we desired it to show that under the most favorable conditions—and it is generally thought and believed that 1916 was the best year—that taking the best year for these short lines, even under that the return as proposed in the will would be wholly inadequate to take care of the corporate obligations, the debts of the companies, and that if under the most favorable conditions the bill as drawn was to be the basis of a compensation to be paid the carriers for the use of their property it would result in immediate bankruptcy to a very large percentage of them. In other words, they would have to go into liquidation.

In addition to this table, I would say that there are approximately 600 roads more that may be compared to some degree with these. In other words, this is somewhat similar to the conditions of those others. We are having a table made of those additional ones just as rapidly as it can be done, so that we can present no calculations or theory, but present a statement of the facts.

Assuming that this represents one-sixth of the weaker lines, the aggregate would be about 35,000 miles of road. The aggregate of the investment would be something like \$950,000,000 to a billion dollars. The aggregate of the funded debt would be something like between \$450,000,000 and \$500,000,000. So that there is that amount of investment in these short or weaker lines that will be practically wiped out if the compensation to be paid for the use of these properties is based upon the bill before the Congress now.

These reports have come to me recently, and I have not marked them to call your special attention to individual cases, but I just pick

out some of them at random. Take the Birmingham & Southeastern in the second group—and I may say they are put into three groups, the first one being those lines having an operating revenue of more than \$500,000 per annum, the second group having an operating income of \$100,000 and less than \$500,000, and the last group having less than \$100,000. Taking the Birmingham & Southeastern, in group 2, the line is 48.2 miles. They have an investment there of \$1,510,000; they have a funded debt of \$831,000; they had a net income for 1916 of \$26,342, or they had a return on their investment of 1.74 per cent, and on their funded debt they had 3.17 per cent.

Senator GORE. You mean that is what they paid on the funded debt?

Mr. ROBINSON. That was their entire net earnings as they made their report for the particular year. Their net operating revenue on their funded debt only equaled 3.17 per cent.

Senator GORE. They paid off their interest on their debt?

Mr. ROBINSON. No, sir; that is prior to paying any interest. As I understand the term, "net operating revenue," it includes operating expenses and taxes and it does not include the interest on investment. My object in preparing this table is to show the members of this committee that if that is to be the basis of compensation, that company could not meet its obligations and it would result in bankruptcy.

Senator GORE. Your point is that their net operating income was equivalent to 3.17 per cent on their bonded debt?

Mr. ROBINSON. On their bonded indebtedness. If their bonds bear 4 per cent or 5 per cent; because many of these shorter lines pay the high rate.

Senator GORE. They default?

Mr. ROBINSON. They would necessarily default.

Senator KELLOGG. They are defaulting now, are they not?

Mr. ROBINSON. Not necessarily defaulting; they are not earning their interest, but they would default thereunder because they have no way to recouping.

Senator KELLOGG. How can they recoup now; they are not making any more now?

Mr. ROBINSON. There are many ways in which that thing is handled so as to save the owners from bankruptcy.

Senator KELLOGG. You mean refund their interest on bonds, or what?

Mr. ROBINSON. Not necessarily. The owners of those bonds frequently repay the balance of the deficiency, whatever that may be, into some future period, expecting the properties to grow and to improve and to meet those obligations thereafter.

Senator KELLOGG. Well, they can do it now.

Mr. ROBINSON. But if Congress takes it out of the hands of the owners, the owner says, "I do not know where that property is gone;" you have no longer any property in your hands, and "I will just proceed to foreclose on my holdings, on my bonds, get what I can out of it, because there is no future of that property."

Senator KELLOGG. That is one of the vices of Government operation.

Senator CUMMINS. These properties have no corporate income as distinguished from their operating income?

Mr. ROBINSON. Practically none. It is very seldom that any of them have an income outside of their operating revenue.

Senator CUMMINS. So the operating income represents practically everything they get in?

Mr. ROBINSON. Their entire income, as a rule. Answering Senator Kellogg further I would say that it is quite common, in fact is practically the rule, that when these short lines are built that it takes years for them to come to maturity, to get enterprises established on their lines so that they may get sufficient earnings, and so long as that is going on in the hands of the people from whom the bondholder purchases his bonds, he goes along with them, because they contemplated the rule that that condition is going to exist and that they are going to be recouped afterwards. But our belief is that if Congress takes from them the property and leaves them without anything, then the bondholder will say there is nothing here further and I had better step in and get what I can. Now, that will result in the enforced liquidation of a very large percentage of these short lines, and we submit that that result ought not to follow. As a rule these lines are constructed out into new and undeveloped territories. They reach the urban population; they serve communities that have no other sources of transportation; they reach into and aid in the development and furnishing of raw material which is essential to the general welfare; they are frequently, in fact largely, constructed by local capital. At least, by independent capital, independent in the sense that the larger lines and the great wealthy class which the public seems to fear so much, have not supplied the money—it is the medium class that have built these roads.

Senator WATSON. Could that road be electrified and left in?

Mr. ROBINSON. I do not know the local conditions at that place.

Senator WATSON. At a rate of 48 miles an hour.

Mr. ROBINSON. I fear to answer the Senator, because I do not know enough of the conditions to answer that question.

Senator WATSON. Where would that road be with the years 1916 and 1917 as the deciding basis of compensation, instead of the years 1915, 1916, and 1917?

Mr. ROBINSON. Senator, this table is for the year 1916 only. Our organization is very limited in its resources. We have not a corps of people to enable us to gather statistics.

Senator McLEAN. That would be better than the average of 1916?

Mr. ROBINSON. I pointed that out, Senator. We selected it because we regarded it as better to be selected under the terms of the best year because of the serious conditions that were going to follow, and if the average for the previous years was adopted it would be worse than this table indicates.

Senator GORE. You have not been able to get the figures for 1917, have you?

Mr. ROBINSON. I have not.

Senator WATSON. I notice here that one railroad's rate of return on funded debt is 22.18, another is 22.16, another 20.75, and another 20.97. How do you propose to bring the weak ones up and pull the strong ones down, or, in other words, of equalizing their returns so as to make it possible for the little fellow to continue to exist without

also adding to the earnings of one who already has such a large percentage?

Mr. ROBINSON. I do not think that we can determine the question of the amount to be paid for the line that is earning a large sum—we ought not to try to determine how that shall be done, but we do feel that we are entitled to present to this committee and to Congress the fact that a large number of these lines have a great, or there will be a substantial, deficiency in their earnings, in their returns.

The CHAIRMAN. Mr. Robinson, have you any statistics or any figures showing the age of these roads or the time of their existence?

Mr. ROBINSON. I have not any figures to show that, but we will present a number of witnesses to you to show that a lot of them are now just being constructed, that many of them have been completed within the three years, that many of them are now being constructed, hence that the average for three years could not be justly applied to them.

Senator CUMMINS. Mr. Robinson, with regard to such roads as these, if we would make a minimum guaranty, the interest on the bonded debt, would that be satisfactory?

Mr. ROBINSON. We have an amendment to propose to you, that these special conditions shall be taken into consideration by the President, by the referees if it goes to arbitration; but that pending either the adjustment by agreement or by arbitration, or by the courts, that the payment made for the use should be equivalent to or equal to the interest on the company's actual debt—not to stockholders but to debt.

Senator McLEAN. What would that total be?

Mr. ROBINSON. We would have to have all the figures before we answered that question.

Senator KELLOGG. That would have to apply to all the railroads in the country?

Mr. ROBINSON. Necessarily have to apply to all the railroads, and our amendment would go to that. Under the terms of section 2, as we would propose to amend it, if that was advanced—I think maybe I should better read the amendment there, or the proposed amendment. Answering Senator Cummins's question, the proposed amendment, section 2, is:

That pending such agreement, arbitration, or appeal the President shall pay, or cause to be paid, to any carrier while under Federal control an amount not less than 90 per cent of such standard return, but in no event less than an amount equal to the accruing interest on its funded or other indebtedness.

Then putting into the bill as it is printed:

Remitting such carrier to its legal rights in the Court of Claims for any balance claimed; and any amount thereafter found due above the amount paid shall bear interest at the rate of 6 per cent per annum; and any excess amount hereunder shall be recoverable by the United States, with interest at the rate of 6 per cent per annum.

So that that would practically amount to an advance of sufficient interest to meet the interest on the obligations of the companies, and if it be found that that was too much, either by agreement or arbitration, or by the action of the court, the Government would have the right to recover the amount over and above. If that is not done and these properties are taken out of the hands of the owners, and they

are left without any way or any device by which they can meet the interest on their maturing obligations, then bankruptcy will follow, and the present owners will be destroyed in so far as that property is concerned.

Senator CUMMINS. Can you tell me, Mr. Robinson, that that amendment applies only to those cases in which this agreement is made between the carriers and the Government—and there ought to be some way in which the President was authorized to agree with these roads upon a compensation and thus avoid the proceedings of condemnation?

Mr. ROBINSON. Well, the question led us into the discussion that I would have reversed if I had been submitting it direct. We have also an additional amendment which precedes that which I would have submitted first, and which I think goes to the point the Senator has in mind. It may not meet his views, but I find the copy which I have—they failed to supply me copies of these—may not conform to the Senate bill as to the lines to be inserted in it. But taking the printed bill, the Senate bill, beginning with line 8 on page 1, and beginning with the word "control," we submit first this suggestion, starting with the word "control":

It shall receive just compensation as a rental for the use of its property, and in arriving at such compensation the President is authorized to guarantee an income at an annual rate equivalent to its net average railway operating income for the three years ending June 30, 1917.

That is but a slight change from the printed form. Following in the same section, amend section 1 by inserting, after the word "rents," in line 6, on page 2, this insertion, Senator, which I think goes to what you have in mind:

Provided, That in case any such carrier has been putting its earnings back into improvements and betterments, or where such carrier has not been operating for three years prior to June 30, 1917, or where the interest obligation of such carrier exceeds its said average net railway operating income, or where there are other peculiar circumstances which would make such standard annual rental unjust or inequitable, the President may agree with such carrier on some other just and equitable basis.

That, I think, goes to the thought you had in mind.

Senator CUMMINS. Yes; it goes to the thought, but that practically gives the President unlimited discretion.

Mr. ROBINSON. I think it does.

Senator KELLOGG. Why make a standard, then, at all? Why not just leave it, then, to the President?

Mr. ROBINSON. You can not make a standard, if I understand you correctly, as to a company which was not in existence and had no earnings as to that period.

Senator KELLOGG. That leaves it open as to any company.

Mr. ROBINSON. Let me analyze it again. You did not have a copy before you. Let me read it for the purpose of getting it straight before you:

In cases where such carrier has been putting its earnings back into improvements and betterments, or where such carrier has not been operating for three years prior to June 30, 1917, or where the interest obligation of such carrier exceeded its said average net railway operating income, or where there are other peculiar circumstances which would make such standard annual rental unjust or inequitable, the President may agree with such carrier on some other just and equitable basis.

If a company had continued to put every dollar of its money back into improvements and betterments, these small lines that do not go into the niceties of bookkeeping that the larger lines do, their net railway income will be shown after they put that money back, if they have followed that plan; then they have reduced what would be payable to them under the terms of this bill, and yet they have been building up their properties. They had their earnings, but they had just simply kept their accounts in a different way; and under those conditions, if it be demonstrated to the President, as he ought to have discretion to do it, and he would only have discretion as to that character of carriers under the particular section of the bill.

Senator CUMMINS. Why is it not taken care of by the use of the words in the bill "net operating income"? That covers the surplus, whether it is put into the property or paid in dividends?

Mr. ROBINSON. As I understand the bill now, Senator, it provides that they are going to take the basis of the reports of these companies to the Interstate Commerce Commission for the three years last past, and if they have kept their accounts that way, if they have used the money and put it into their property that way, then they would not under the existing bill get any profit under that condition.

Senator CUMMINS. I am not speaking of those roads that have not made reports. I do not know anything about them. But if the bill is based on net operating income, the roads would get the benefit of that net operating income, no matter whether they put it in dividends or whether they put it in surplus, or profit and loss, or whether they put it in the property.

Mr. ROBINSON. I do not understand, Senator, that you would be permitted to go back and recast your accounts so as to change the figures and show a larger net return. I understand you are going to take the reports now on file—that the die is cast.

Senator CUMMINS. The net operating income has nothing to do at all with the property, with the money that is taken from earnings and put into additions and betterments of the property.

Mr. ROBINSON. It may not, but if the earnings have been taken and put into the property and not accounted for, and thereby show a less earning than was actually in existence then they would not receive an equitable and just return on their property under this provision, and this clause here would merely permit the members to recognize that condition. If you have been doing that and demonstrated that then you are entitled to a larger sum.

Senator CUMMINS. The roads reported to the Interstate Commerce Commission, reported and kept their books in accordance with the system established by the commission.

Mr. ROBINSON. That is true to a very substantial extent, but I repeat the statement that I made before, and that is that a large per cent of the smaller lines have been putting back their earnings, and they have not been attempting to show net earnings; they have attempted to build up their property and have not attempted to keep their accounts for the purpose of showing a net income.

Senator CUMMINS. Yes; but net earnings and net operating income are two very different things, at least as used by the commission. The net operating income has a certain definite meaning according

to the phraseology adopted by the Interstate Commerce Commission.

Mr. ROBINSON. Which has only been adopted, as I understand, within the last few months.

Senator CUMMINS. I am not able to answer as to that, but I think, though, it has been in force much longer than that.

Mr. ROBINSON. The forms sent out to the class III railroads prior to June 30 last did not have any such title in them or form in them as "net operating income." I have examined it with some care and two or three of us have gone into it, and so I say it.

Senator CUMMINS. You may be right about that; I do not know.

Mr. ROBINSON. I return to this clause. There may be special conditions. If the condition I state exists, I think the President ought to have the discretion to recognize that condition and to pay as to them.

Second, where such carrier has not been operating for three years prior to June 30, 1917, he ought to have some discretion, or somebody ought to have some discretion. They did not make any record in that three years' period on which they were going to average it.

Senator GORE. There would not be any basic period.

Mr. ROBINSON. There would not be any basic period there. This would give him discretion as to lines of that character, and there are quite a number of them as we will show you.

Next, "or where the interest obligation of such carrier exceeds its average net railway operating income," we submit that if the Government takes the properties from these people that they necessarily have got to protect the corporate obligations on its debts, so that it will not be thrown into bankruptcy and thereby deprive the owners, the bondholders, and the people who advanced the money—deprive them of their entire property, because many of them carry those bonds in banks; they have loans on them, and so on, and just as soon as it appears that the Government has taken those properties and has deprived the owners of them there is a fixed limited income, which is 2 per cent or $2\frac{1}{2}$ or 3 per cent, and the banks will call those loans at once—bound to do it—and just as soon as that is done the liquidation takes place as to that fellow and he is wiped out. It is the result of the Government having taken over and taking the use of the property.

I submit the President ought to have that discretion when you couple it with the fact that if he does advance it and it be found by arbitration or by the facts that that was too much, then that that can be recovered, because it is so provided in the bill here that if this 90 per cent which is proposed here is an overpayment, there is a provision already in the bill that it can be done. But pending the adjustment, that I submit is absolutely vital to the owners of these properties, and of the utmost importance to the community at large, these securities should be protected so that they will not be destroyed.

Senator GORE. Mr. Robinson, would you have the Government guarantee the interest on the funded debt, whether or not the net operating income was sufficient to pay it or not?

Mr. ROBINSON. I would, because I do not believe that that has anything to do with it. I believe those corporate obligations have got to be met in some way; if you take the property from the owners, there is no way for them to meet the obligations.

Senator GORE. They can not shift about and meet them?

Mr. ROBINSON. As they can when they are doing it.

Senator UNDERWOOD. What effect would it have on these railroads if the Government did not take them over?

Mr. ROBINSON. As to a large part of them it would probably prove fatal.

Senator UNDERWOOD. Why?

Mr. ROBINSON. Because they would in the manner of handling the business, the concentration of things, the failure to supply an adequate amount of cars, and things of that kind, would dry them up so that they would not be permitted.

Senator UNDERWOOD. Why would it not, if the Government owned these big trunk lines, supply these short lines with the cars, and why would not the short lines supply it with traffic just as it is going on to-day?

Mr. ROBINSON. The short lines would be glad to supply it with traffic because it would be their very life's blood to keep supplying it.

Senator UNDERWOOD. Why should not the Government continue the present operation? They are all feeders of main lines somewhere, and why would not the main line go on feeding just as it is now and the Government supply the power? Why should the machinery of the operation of these roads be disturbed by the Government taking over and operating the trunk lines under the same management as they are now? Why should that disturb the condition of these short lines?

Mr. ROBINSON. I do not say that would follow because I do not know what will be done in the future. But the tendency would be for the Government to utilize the lines that it had and for which it was responsible, and for which it was paying in every instance; and not have to pay out something to an outside company, not to have to use the outside instrument to aid it when it had an inside instrument for that purpose.

Senator UNDERWOOD. As I understand it, these short lines in the main are not competitors; they are feeders.

Mr. ROBINSON. They are feeders, but there are many of them in a competitive situation.

Senator UNDERWOOD. Of course, I can recognize what you say is true as to a competitive line, but I can not see where it would apply to a feeder at all, because I do not see any change in the feeder's operation, whether it was owned by the Government or not, or whether the main line was owned by the Government. I do not see that it would make any material difference to the mere branch road feeding the main line. They want its business and it wants their business, and the conditions of traffic would go along in the same way except where it was necessary for the Government to divert cars and rolling stock for the purpose of moving troops and Government facilities, and then, of course, whether it belonged to the Government or not it would be diverted.

Senator ROBINSON. Do either of you have any apprehension that the Government would not take over the feeding lines? Has there been any suggestion that it would not?

Senator UNDERWOOD. Why, no; but I was attempting to try this case from the viewpoint of a committee.

Senator ROBINSON. Yes.

Senator UNDERWOOD. It is a question that addresses itself to us.

Senator ROBINSON. The point I had was if the Government was taking them over it would take them over as a system so far as the Government control is concerned just as it would all the roads which contribute to that system.

Senator UNDERWOOD. I do not know; I had not reached any conclusion on it at all, Senator. I was just asking my question to draw out the witness, to get his view. I had not reached any conclusion, but it seems to me it is entirely within the power of legislation, if we think we have reached a point here where we have this taking as temporary. Of course, if it is permanent taking I realize that you have to take them all, but with a temporary taking, in the position of a large number of small roads, it would be entirely within the scope of this committee to exclude them from the taking.

The CHAIRMAN. What would be the effect upon a short line which happened to be located within such a district that the character of goods that it carried was such that it might not be so essential, and the trunk line that it was a feeder of was taken up and was carrying certain goods that would practically exclude the bigger part of the freight carried by the short line? What effect would that have if the Government had no control, did not have it in its possession, and was simply utilizing this other road and leaving the small one out, and it still not be a Government function?

Senator UNDERWOOD. I take it under Government control there would be less likelihood of discrimination against a short line and the people on the short line than there would under a railroad holding, because under Government control those people would have a voice with the controlling management here and probably would be listened to.

Senator GORE. A party called my attention, Mr. Chairman, to exactly the instance that you cite. I think it was the Norfolk & Southern, a system of 90 miles, which is in new territory, and its rolling stock has gone out on other roads and they can not get it back. They have a famine of rolling stock and cars; they can not get their own stuff back, and they are in hard lines on that account. That is a case in point.

The CHAIRMAN. If the Government has taken charge of its rolling stock?

Senator GORE. This, I think, occurred before it was taken over.

Senator CUMMINS. There is a question of fact that I raised yesterday which lies at the bottom of this. Has the Government taken either your road or any of the short roads?

Mr. ROBINSON. Senator, it is going to be rather difficult to answer all of these questions. If I can come to them one by one I will do the best I can. But I want to start with Senator Robinson's question and Senator Cummins's. I can not believe for a moment that there is any question but that the Government has taken them over, and I am going to read a paragraph from the presidential proclamation:

Now, therefore, I, Woodrow Wilson, President of the United States, under and by virtue of the powers vested in me by the foregoing resolutions and statute, and by virtue of all other powers there to me enabling, do hereby, through Newton D. Baker, Secretary of War, take possession and assume control at 12 o'clock noon of the 28th day of December, 1917, of each and every system of transportation and the appurtenances thereof located wholly or in part

within the boundaries of the continental United States and consisting of railroads and owned or controlled systems of coastwise and inland transportation, engaged in general transportation, whether operated by steam or by electric power, including also terminals, terminal cars, and private car lines, elevators, warehouses, telegraph and telephone lines, and all other equipment and appurtenances commonly used upon or operated as a part of such rail or combined rail and water systems of transportation.

Now, following that, the director general gave notice in his order No. 1, which was served upon the various railroads—and served upon me, as far as I am concerned—that he had taken possession of the Tennessee Railroad. It is a branch short line that is out there, and he served that notice upon practically all of the railroads. I have not yet found even a little one that did not receive the notice that his road had been taken over by the Government.

Senator CUMMINS. And have you got the notice?

Mr. ROBINSON. I have not, Senator; but it is published in the form of order No. 1. I have not got it with me.

Senator CUMMINS. That would seem to settle the question that he has taken possession of the road.

Mr. ROBINSON. I will hand it in, if I may, during the course of the afternoon.

Senator CUMMINS. I wish you would, because that clears up a point that was discussed yesterday. It seems definite that he has taken possession of the road.

Mr. ROBINSON. It does seem definite that he has taken the possession of the road, and I am following the instructions that he has given to me and the things that he has told me to do.

Senator WATSON. Has he told you to do anything?

Mr. ROBINSON. He has not told me as a receiver of the Tennessee Railway. Getting to Senator Underwood's question as to the effect upon the short lines if the Government took a part and left the others behind, what would be the result? Human nature is the same, whether it happens to be a Government official, a railroad official, or anyone else. If the main or trunk lines are taken over and controlled by the Government officers, and there is a limited supply of cars available for use, and the manager or Director General can have those cars loaded on lines that he controls and which he has rented, or is paying a rental, and can use those cars along those lines, the temptation is not to allow one of those cars to go off on a branch line or a short line where he will have to pay a part of the earnings or the tariff received for the handling of that business.

That will be the tendency, and it can not be overcome, and in practice it will soon be that these branch lines, these feeders, will have to starve to death. It follows, whether the Government takes them over or leaves them out, if the starvation process follows it will destroy the enterprises that are located along those lines. Gradually this enterprise will stop and another one will stop, and when it comes time for these properties to be returned to the owners a large percentage of their enterprises have been stopped and many of them have gone into liquidation and could not meet their obligations, and you start anew, having been very seriously injured. Whether you have received adequate compensation—I should use the word "just" compensation—for the use of your property, there is a great danger of loss in that side issue.

Senator UNDERWOOD. Mr. Robinson, as a matter of fact, most of these side roads, the smaller roads, do not own their rolling stock, or a large amount of it, do they?

Mr. ROBINSON. As a rule they do not; no; not as large a percentage as the trunk lines.

Senator UNDERWOOD. And they are dependent on the trunk lines putting in their cars for foreign business—that is, business going off of the short-line railroads—because it feeds the big line?

Mr. ROBINSON. That is true to a substantial extent.

Senator UNDERWOOD. That would be the same case whether the Government was operating these roads or whether the present owners were operating the roads, would it not?

Mr. ROBINSON. No. Under existing conditions these short lines are suffering, and have been suffering during the past three years, for that very reason. Business was congested; the demands were greater than the supply. The temptation has been, and it has been practiced among the trunk lines, to cut the supply of cars of these short lines so that they have not had adequate supply; they have not had the full proportion that they used to receive, because if we can load that car on the short line why give it to somebody else?

Senator UNDERWOOD. Then you think if the President takes them over the conditions will be better in that regard?

Mr. ROBINSON. That may be the result. But if they measure our compensation by a period where we have been suffering from that condition, then the fact that the Government may give some additional cars now would not give additional compensation. It might result in aiding the enterprises on the line as against bankrupting them, but it would not give the owners of the property any additional revenue because of that fact.

Senator WATSON. Practically, while the Railroad War Board was controlling the railroads of the country for about six months were your lines helped or harmed?

Mr. ROBINSON. During that period our earnings were gradually and constantly going down, but I do not charge it in any sense to the war board, because it was the general condition, which could not be overcome. My line should handle an average of 15 cars of lumber a day. For some months we have been handling an average of 10 cars per week, the reason being that there was an embargo here and there was an embargo there, and we were not permitted to load, so that our earnings since the European war started have been gradually sinking because as a result we could not get cars and could not ship things.

Senator WATSON. Has the Director General had charge long enough for you to estimate the results?

Mr. ROBINSON. He has not. He has not given us any general instructions, and the operations so far are wholly inadequate to judge of any results that will follow.

Senator CUMMINS. Mr. Robinson, have these short lines, generally speaking, an equipment of cars proportionate to the business they do over their lines?

Mr. ROBINSON. As a rule they have not.

Senator CUMMINS. They depend very largely on the cars of the trunk lines to do their business?

Mr. ROBINSON. They do. As a rule, when these lines are built, the trunk lines encourage them to construct them, seeking the additional business when the territory develops and when the raw materials are brought in. Some years ago, during the period when they were being encouraged, the trunk lines supplied the cars freely without compensation, without a per diem compensation, without making any charges of that kind. The division of rates was fixed upon that basis, that they would supply the cars and would give the short line a division of the rates. Subsequently the rule was changed and a mileage basis was established for the use of the cars, but no change in the proportions assigned to the short-line roads. Later on a per diem was established, which ranged from 25 to 75 cents per day per car, and the rate is now 60 cents—or was prior to the taking over of the roads. The rate was 60 cents a day, and the short lines were having to pay that 60 cents a day for each car from the time it was delivered to them until the time they returned it, and they did not get any increase in their proportion. They thereby had an added expense, which was a very substantial one, and that had the effect of decreasing their net earnings to a very substantial extent. These embargoes have decreased their net earnings during this three-year period. The so-called prosperity of the railroads since the war has not affected any of the short lines to any substantial extent, because the trunk lines have been the recipients of the great bulk of that business. As I said before, we are getting a smaller and less and less supply of cars, hence our revenues were going down as against that, and we are now asked under the terms of this bill to accept compensation for roads under these conditions.

Senator ROBINSON. Have you any table showing what proportion of the raw material, or the necessary material required at this time, originates on your short lines?

Mr. ROBINSON. No, Senator; I have not any such table, and I can not even make you a guess as to what that is.

Senator CUMMINS. Your general proposition, I take it, then, is this: With the Government in possession of the trunk lines, if it finds that it has use for the cars on the large lines, it will be slow to give you the proportion of cars that you have heretofore had?

Mr. ROBINSON. That will be true, especially if the Government has not taken over our lines, if the short lines or the branch lines were left in the hands of the owners, and the Government would be very slow to give us cars to be loaded on our lines and have to give us a proportion of the revenue if they could load them on their own line. Our position here as to the necessity of our taking care of our obligations takes this legal proposition into view, and that is a just compensation which is guaranteed under the Constitution. I think if these lines must go to the courts to obtain their just compensation the courts will not only take into consideration the operation and the maintenance, which is referred to in the bill, but it will take into consideration the necessities of meeting the company's obligations.

I think it will take into consideration all of these extraneous matters—for instance, if the Director General has come along and raised the compensation of the employees. We do not now pay standard wages, because we do not employ the same class of men. The engineers that we have on our lines, as a rule, would have to be firemen on the main lines, because they are not well trained, as a rule, and we

pay very much less. If those rates are raised by the Director General—and he has made some public announcements that he contemplated increasing those—the wages are increased and subsequently the properties are returned to us without an increase in freight rates, we then have got a position where we can not meet our expenses, and we will necessarily be damaged in that way.

Senator KELLOGG. You expect an increase in operating expenses under the Government operation, do you?

Mr. ROBINSON. There will be increases in certain lines, beyond question. Whether there will be an increase in the aggregate remains to be seen.

Senator KELLOGG. It has been the experience the world over, without scarcely an exception, that Government operation immediately means an increase of expenses, has it not?

Mr. ROBINSON. I understand it to be, and firmly believe that to be so; but I wanted to say I did not know the fact.

Senator ROBINSON. What were your hopes, Mr. Robinson, for the future of these roads, had not this war occurred and the Government taken them over? You have been running them at a loss generally, have you not?

Mr. ROBINSON. Some of them have, and some of them have been running at a substantial profit. A very large percentage of them have plans mapped out for the future and are planning some additional extension, the location of additional enterprises on their lines, the opening of a mine, and things of that kind, all of which they are working up to, and firmly believe that in the end there will be a substantial increase in their business, in their revenue, and their profits.

The CHAIRMAN. You have no figures showing the length of time of the operation of these roads, so that the committee could get an idea of the business they have been doing over a period of years?

Mr. ROBINSON. The only figures I have here, Mr. Chairman, are in this table, which does not touch that question at all. We have no figures. We have not attempted to ascertain that fact, because to-day is the first time I have had that question raised.

The CHAIRMAN. You said a moment ago that these roads in 1916, as I took it, which was a prosperous year, had aggregate earnings, and the total net of your return on investment was 1.58 per cent. while your road on return on the funded debt was 3.33. That was your prosperous year, and that takes in all of these roads—the 155 on this table. Now, I think the committee would like to know what length of time these roads have been running—at least, put them into such groups or give them individually, the length of time they have been operating, so that we might get some idea of what has been the return for the years previous to the one you designate here.

Mr. ROBINSON. Mr. Chairman, I have evidently failed to make my statement clear as to 1916 being a prosperous year. I intended to say, and thought I said, that I selected 1916 because it was generally said that it was a prosperous year. I do not think it was a prosperous year for the short lines. It was more prosperous than 1915, but it was not a prosperous year. Previous years have been more prosperous, and I do not regard 1916 as a prosperous year at all. But I selected the last year for which we could obtain the reports from the Interstate Commerce Commission, and I regarded that as the year which had been stated in testimony here as the most prosperous year.

Senator GORE. You were unable, as I understand, to get the 1917 reports?

Mr. ROBINSON. They have not been furnished. They are not available as yet.

Now, Mr. Chairman, as to supplying the data as to the length of time or the period during which these roads have been in existence, we can obtain that fact from the reports of the commission as to those in this list here, and if it is desired we will undertake to do it. As to many of these questions, we have other witnesses here who will give specific cases as to the future of the properties, the fact that extensions are being made, that mines are being developed, that the conditions are different from what they were during that three-year period, and so we will present that information to you by other witnesses.

Senator KELLOGG. About the only importance to the committee is that there are many such cases. As far as I am personally concerned, it does not seem as though it is going to be possible for us to consider every railroad in the United States and frame this bill to meet that. The bill has got to be framed to meet the general conditions, and the fact that there are such cases is about the only thing of benefit I can see the committee can get from it.

Mr. ROBINSON. Some basis of classification?

Senator KELLOGG. As to each individual railroad, we could not do it in a year.

Mr. ROBINSON. Senator, I had not thought to do that, but I thought I should present the witnesses to show special cases. Take, for example, a line that has just been built and has just gone into operation within four months. I think a statement as to that would illuminate the situation very much. So I thought we would present just a number of witnesses to show the different conditions as to each and then we present a general statement as to the extent to which that goes, and you have before you then a billion dollars of investments here, and here is the condition that applies here.

Senator KELLOGG. Of course we know that there are roads which have been built within the last six months, the last two years, the last three years, and the last six years; we know there are many of such cases. Personally I have no objection to it, but it does not seem to be necessary.

Mr. ROBINSON. Now, in connection with the requests that we make, the amendment that we proposed here, we have been relying upon this particular clause in the President's proclamation:

Nothing herein contained, expressed or implied, or hereafter done or suffered hereunder, shall be deemed in any way to impair the rights of the stockholders, bondholders, creditors, and other persons having interests in said systems of transportation or in the profits thereof, to receive just and adequate compensation for the use and control and operation of their property hereby assumed.

We think that under that the bill proposed does not give that assurance, that protection, to the bondholders. We are not asking that this bill make any specific provision to the stockholders; we are proposing that that be left to the President, to arbitration, or to the courts, where it may have to go in the end.

Senator KELLOGG. As I understand it, it is not your idea that because these railroads have been unable to make their interest, that the Government should step in and correct that situation?

Mr. ROBINSON. Our position is that when the Government takes them it should take such obligations and meet such obligations as must be met to protect the bondholders, the people who put their money into it, until such time as the adjudication of the rights of both parties shall be determined.

Senator KELLOGG. But not permanently?

Mr. ROBINSON. But not permanently. If this fund is advanced and it was found afterwards, as it is provided in this bill as drawn, then the surplus or the overpayment would be recovered. There would be a charge against the property and it would be recovered from the property, but our position is that you should not take the property and expose it to ruin and loss, and wait until the courts have finally adjudicated it. Suppose you take a property of that kind and the courts finally determine that the Government ought to have paid not only that but more, and you had not paid that, and it had gone into liquidation, the bondholders and creditors had lost their money, that would be a very serious injustice. Now, we think the Government ought not to expose those people to that condition, that the Government can protect itself by advancing the necessary amount to meet those interest obligations, and can provide that in the event it was too much, it shall be repaid to the Government, and the property can be made liable therefor because it is now a lien. If it is coupons on bonds, those coupons are a lien on the property, and if the Government takes them up it can step into the place of those holders and can be repaid.

Senator KELLOGG. Take the case of these roads that are paying a good liberal income; do you think the Government should take part of that away from them to make up the loss in the others?

Mr. ROBINSON. No, sir; I do not think it ought to take it away for that purpose.

Senator KELLOGG. Ought it to take it away at all?

Mr. ROBINSON. I do not think it ought to take it away at all, because I do not think this interest we are talking about is a final determination, and we have not determined whether that is just compensation or not. But I think you have no right to take away from one and give to the other.

Senator KELLOGG. Have we a right to take it away from one at all?

Mr. ROBINSON. I doubt it.

Senator KELLOGG. If its averaged earnings for a number of years were 10 per cent, should we cut it down to 5?

Mr. ROBINSON. Not at all. We are only seeking to protect these weaker members until this adjudication takes place.

Senator KELLOGG. But that suggestion is involved here, because some of your lines are earning an average of 11, 12, and 15 per cent—20 per cent, some of them. Now, should the Government cut that down to 5?

Mr. ROBINSON. I think not. But I think it was our duty in presenting that to you not to pick out the worst examples, but that we should pick out full and complete information and examples as far as we had them. I do not think you have the right to take it from one and give it to the other.

Senator GORE. There is no suggestion in the bill, or anything that you have, that that should be done?

Mr. ROBINSON. No; the Senator was asking me the question whether that ought to be done or not.

The CHAIRMAN. Your suggestion is to insert some amendment or something in this bill to take care of the roads whose standard is not showing a net return to the road.

Mr. ROBINSON. Sufficient to take care of the interest on its maturing obligations. My opinion is it should take care of them in the meantime, and when it is adjudicated just compensation will be greater or less, and then it can be adjusted.

The CHAIRMAN. But has no reference to those short roads which have ample income to take care of their obligations?

Mr. ROBINSON. The bill would apply and the President would be at liberty to make agreement with them if he wanted to, just as now exists. If he did not want to make an agreement with them on a 10 per cent basis or a 6 per cent basis, he would not make any agreement; he would send it to the court and let the court determine whether that is proper or improper.

Senator ROBINSON. Are you familiar with the Kentucky, Tennessee & Northern Railroad up there?

Mr. ROBINSON. To some extent. The principal owner of it is not here, but the receiver is here and wants to testify to it. You said the Tennessee, Kentucky & Northern?

Senator ROBINSON. Yes; the Kentucky, Tennessee & Northern Railroad.

Mr. ROBINSON. I am not.

Senator ROBINSON. I noticed the rate of return on its investment is 366.49 per cent, with no return on the funded debt. Does that mean it has no funded debt?

Mr. ROBINSON. They did not report any funded debt at all. There are a great many of them. Every one of them that has that "dash" line in there is supposed to have no funded debt. The stockholders put up the money and built the roads and did not bond their property. But they have their stock which represents it.

Senator ROBINSON. Is that a large rate, 366 per cent, on its investment?

Mr. ROBINSON. They only show an investment of \$2,200, and they show a return of \$8,000 net operating income.

Senator ROBINSON. I see the small capital.

Mr. ROBINSON. They have 17 miles of road. The probability is that that is a reorganized road, the original cost having been charged to other reorganization proceedings, and they just have got a nominal capital of \$2,000 on 17 miles of road.

Commissioner Anderson. May I ask a question, Mr. Chairman?

The CHAIRMAN. Certainly.

Commissioner ANDERSON. Mr. Robinson, as I understand it, your chief claim is that a number of these short lines which are new, developing, and embryonic, will not have their just compensation even approximately measured by their return in the last three years?

Mr. ROBINSON. That is our position as to those and to some others.

Commissioner ANDERSON. Is it not clear that under section 3, under hearing by auditors or referees therein provided, that all evidence admissible for any legitimate purpose throwing light upon what just compensation is, whether it be evidence concerning past

earnings or future prospects, must be admitted by the referees and made a part of the basis of their report?

Mr. ROBINSON. Mr. Chairman, in answer to that I would say that the previous sections of this bill propose a standard return, perhaps a measure of compensation for the use of the roads, and our theory is and our belief is—we are convinced—that these so-called auditors will feel bound when they come to consider these questions by the basis fixed as net operating railway income, and that they will not feel at liberty to advance the funds necessary to pay the interest on the obligations outstanding, that they will say we do not do that in other cases and we won't do it here. And beyond that we are of the opinion that that is an arbitration, we feel that the arbitration ought to be an impartial one, that the parties in interest ought to have some opportunity of participating in that arbitration, and that it is a Government instrument wholly without any opportunity of the party in interest to take a part in its arbitration. We therefore think that Congress ought to throw out and afford necessary protection to these obligations, these bonds, and so on, otherwise you will destroy to a very great extent just the minute the bill is passed the value of these holdings in the hands of the people who have put up the money to build the roads.

Commissioner ANDERSON. Let me interrupt you, Mr. Robinson. You are a little bit in error. If you will look at page 3, line 13, you will find "said auditors"—and you better change that to referees, because they do not appear to understand auditors down here as well as we do up in New England—"shall give a full hearing to such carrier and to the United States and shall report to the President the amount due such carrier as just compensation." Do not those lines give you every right for a full hearing, adducing all competent and material evidence that you could ever have before any tribunal?

Mr. ROBINSON. I do not doubt that that would afford an opportunity to present anything that you wanted to do, or that the carriers wanted to do; but I am of the opinion that these auditors, being mere representatives of the Interstate Commerce Commission, and not being in any sense of the word a judicial body, will say, "Well, we are bound here by this provision that this standard return is the measure, and we can not go beyond that measure."

Senator KELLOGG. That is, you think that body should be a body of impartial men of the highest business ability and technical knowledge as to railroads, appointed by the President?

Mr. ROBINSON. I think the biggest men in the country and the strongest men in the country ought to compose that arbitration board.

Senator KELLOGG. You do not think it ought to be composed of clerks in the office of the Interstate Commerce Commission?

Mr. ROBINSON. I do not. I think it ought to be the very biggest. If I understand the object of this legislation, it is to arrange for the adjudication, the adjustment of these matters, and avoid litigation and avoid clogging up the Court of Claims and tying these things up year after year. The object is to get it so that these men may exercise their discretion and the President may act thereupon, and we feel that the biggest and strongest and best men in the country ought to compose that board.

Senator UNDERWOOD. The real substance of the contention of the weaker roads in the end is this, is it not: That under the basis of the Government order taking them over, either under past earnings or the immediate future prospect of earnings, they will not be able to meet their obligations, and no longer being going concerns as corporations they can not continue to finance for the future; that simply means bankruptcy unless the Government makes some exception to these railroads in taking them over. Is not that it?

Mr. ROBINSON. That is our point of view.

Senator UNDERWOOD. It is not that you are contending against the auditors or the referees finding a fair verdict, but it does not include in their verdict the possibilities that could be considered as long as the railroad is a going concern and operating itself; that you take away from the railroad the opportunity to finance itself, for the owners of it to invest more capital to pull it through, and that would not be an item that the auditors would consider. Is that not the real trouble?

Mr. ROBINSON. That is our view of the situation.

Senator GORE. Is it your idea, Mr. Robinson, that as to these roads whose operating income has not been sufficient to pay the interest on their indebtedness, and where the Government should advance the money to pay this interest, that should constitute a charge in favor of the Government and against the property.

Mr. ROBINSON. That is true, and I fear the Senator was not here when I read the proposed amendment which specifically here fixes it. This is practically an advance. It is not settling the question of the compensation, and when it says that they shall make this account, it says:

* * * Remitting such carriers to its legal rights in the Court of Claims for any balance claimed; and any amount thereafter found due above the amount paid shall bear interest at the rate of 6 per cent per annum; and any excess amount paid hereunder shall be recoverable by the United States with interest at the rate of 6 per cent per annum.

Senator GORE. That is, interest over any rates that were finally decided to be just compensation?

Mr. ROBINSON. Yes, sir.

Senator GORE. That is, if the amount of interest paid by the Government on the indebtedness exceeded what was finally ascertained to be just compensation, the Government would be entitled to recover it?

Mr. ROBINSON. Our amendment leaves that in the bill, so that if the Government has made this advance, protected these properties, protected the corporations, protected the bondholders during this period, if it be found that that was an overpayment, then it is recoverable by the United States with 6 per cent interest.

Senator GORE. I want to ask you a question, Mr. Robinson, if you can not obtain the data now and can find it, as to how many of these roads make reports to the Interstate Commerce Commission of these 115.

Mr. ROBINSON. All of them.

Senator GORE. How many of them come under Class I?

Mr. ROBINSON. None of them.

Senator GORE. How many come under class II, then?

Mr. ROBINSON. That I will have to ascertain, Senator.

Senator GORE. How many in the next? I am just asking the question in order to get it in the record.

Mr. ROBINSON. I have not divided them, so I will have to ascertain it for you.

Senator GORE. How many of these roads have been constructed, either entirely or practically, since January 1, 1900?

Mr. ROBINSON. I will have to ascertain that information.

Senator GORE. I wish you would and put it in the record.

The CHAIRMAN. That was the question that I asked him a moment ago.

Senator GORE. Yes.

The CHAIRMAN. If he could get any data showing the life of these different roads, so that we would have a basis on which to judge their future prospects by their past experience.

Senator GORE. Yes; I noticed that question on the part of the chairman, and they are material. I wanted to get them altogether so that Mr. Robinson could answer them in a series. Can you tell me how many of these roads are less than 100 miles in length?

Mr. ROBINSON. I can give you that by making the calculation.

Senator GORE. Yes; and put all of this in, and then also state how many exceed 100 miles and are less than 200 miles.

Mr. ROBINSON. Yes.

Senator GORE. This is a matter of common knowledge, but we want to get it in the record. At least promoters very often figure on a number of years in which they have to take a loss; is not that so?

Mr. ROBINSON. Yes, sir.

Senator GORE. Which they call the pioneering period?

Mr. ROBINSON. Yes, sir.

Senator GORE. And to take compensation out of that pioneering period would not be just; it is not the way experience goes and is not the way business men calculate.

Mr. ROBINSON. That is true.

Commissioner ANDERSON. Mr. Chairman, may I ask Mr. Robinson one question? Will you look at page 3, the end of line 3. Would it meet what you think are the equitable claims of the new and developing lines to have the President consider their outstanding bonds as a special class if you added after the word "claimed" something substantially like, "*Provided, however,* That the President may authorize the payment or advance of larger sums, if necessary, to meet interest accruing during Federal control on valid outstanding indebtedness incurred on property used for carrier purposes"?

Mr. ROBINSON. That would be a substantial improvement. apparently, over the bill, but I am not sure that it would meet all of the conditions. and therefore would have to consider it before giving a final approval. But I am sure it would be a substantial improvement over the bill as printed.

Senator GORE. Mr. Robinson, I wish you would answer those questions, not only as to the 115 members but as to the 600 others, so far as you can.

Mr. ROBINSON. I am undertaking to have that table made and we will apply it to the whole list as far as we get it.

Senator GORE. Yes, sir. One other question: If a policy was adopted which did not render a sufficient return on these new properties, would that tend to discourage railroad development, do you think?

Mr. ROBINSON. I was going to come to that as soon as the question should have been finished.

Senator GORE. That is all I wanted to ask you.

Mr. ROBINSON. Mr. Chairman, there are large sections of this country that are undeveloped. The development so far has been made by the construction of these short lines and they have been added on and absorbed into the systems, and so on. It is becoming more and more difficult to get money to build one of them. It is impossible and has been impossible to go out and sell bonds in the ordinary way to build or to get people to subscribe. You have got to find an individual here or there who will want to come into a railroad before you can get any construction. Hence the amount of construction has decreased wonderfully, and yet we have a vast section of the country that ought to be developed.

If the Government now takes over these properties and does not make adequate provision for their operation, does not protect the people who have advanced this money, it will become an absolute bar to any future development. If the Government does not take over and own the railroads it will be an obstacle in the way of any future construction work, and that will last a very long period. We will have to have another generation of people before we will be able to get any money to build any additional railroads, and therefore we will be deprived of the vast quantities of raw material that are now waiting for use. So, I feel, from that point of view alone, it is of the utmost importance for the Government now to take care of and protect the interests of the people that have built these railroads and who have not had any return thereon, or practically any. I do not think I need take more time of the committee.

There are a great many things I might say. We have a great number of witnesses here having special lines and cases. Mr. Chairman, may we present some of them? These people who invested their money and who have got properties feel that they are being sacrificed.

Senator GORE. Would you select one or two of the typical cases, Mr. Robinson, and present those? We would not want to go through a long proceeding. We want to get something that typifies the situation.

The CHAIRMAN. I would suggest, Mr. Robinson, as suggested by Senator Gore, that you get one or two witnesses that might be typical and leave the committee to suggest, or another member of the committee, going into these special cases.

Mr. ROBINSON. Then I will retire, Mr. Chairman, and I will introduce Col. Dean, of Georgia.

Commissioner ANDERSON. Mr. Chairman, may I say a word about that question that I asked last?

The CHAIRMAN. Yes.

Commissioner ANDERSON. I do not think there will be the slightest objection on the part of the Government, whom I represent, in inserting in section 2, probably after the word "claimed," a proviso

reading substantially like this, and you may find that you can improve it:

Provided, however, That the President may authorize the payment or advance of larger sums, if necessary, to meet interest accruing under Federal control on valid outstanding debt obligations incurred for property used for carrier purposes.

That would put it within the discretion of the carrier president, if there are some of these embryonic roads that have got debts that would not be taken care of out of 90 per cent of the figured standard return that ought to be taken care of, to do it. We have no objection to it. That power is vested in the President, and there is no doubt that section 3, as it now stands, covers every possible aspect for just compensation whether based on the past or on the future.

MR. ROBINSON. Mr. Chairman, I will introduce Col. Dean, representing the Gainesville Northwestern Railway of Georgia.

THE CHAIRMAN. You may take the chair, Mr. Dean, and give your name.

MR. DEAN. I would rather stand. I am a lawyer, and used to speaking on my feet.

THE CHAIRMAN. Please give your name and address and official connection.

STATEMENT BY MR. H. H. DEAN, GENERAL COUNSEL OF THE GAINESVILLE MIDLAND RAILWAY AND THE GAINESVILLE & NORTHWESTERN RAILWAY.

MR. DEAN. My name is H. H. Dean, and I am general counsel of the Gainesville Midland Railway and of the Gainesville Northwestern Railway, both in the State of Georgia.

Gentlemen, I understand from the questions I have heard asked and having read the bill and discussed the matter in caucus with the members of the short lines here, and with my general information with reference to short-line railroads that I should undertake to touch upon what I understand are the general fundamental questions that you want to hear—what you might call typical cases. I will come just as quickly as I can to what I think would be just compensation, because, as I understand, under the Constitution that is a matter that must be finally arrived at in order to take over or condemn or appropriate private property for public purposes.

If you are going to take permanently, there would not be any question at all, because the Constitution would just simply say that the price would be just compensation to the owners of the property based upon the value of the property. Then if you are going to take for a shorter term than complete and absolute taking, the question would be what is just compensation for that length of time, and it would be in the nature of a rental. Generally speaking, the mind of a lawyer goes at once to the proposition that that means interest on the investment in the way of rent. We discussed the matter in the House yesterday, and the House committee gave us a very full and fair hearing and shot a good many questions into us; but that is where we finally landed. It seemed to be the consensus of opinion that that would be the proper way to arrive at it. Now, you are treating a short line, apparently, here as a permanent

institution. I just want to liken it, if you are going to have a meeting, to adjust the value of a man's services and then take up the question of the value of a lot of boys'. You would certainly not fix the value of those boys' services except for a limited time, because some day they would be men. If you had any experience at all in the building up of railroads, and if you will go back to the history of every railroad we have got in the United States to-day, you will find that they are all composed of original short lines. They began in one town and crept into another and then connected up and linked up and were consolidated, had receivers and everything of the sort, and finally it became a long line and a big line.

You take the roads I represent in connection with other lines that are projected. We have a direct line from Savannah, Ga., to Knoxville, Tenn., and reaching from the ocean to the coal fields in the great West, because a great number of those come into Knoxville. It would be a hundred miles nearer the ocean than any other line, via Atlanta, or any other way. We have got now what is known as a Knoxville road, running from Knoxville to Murphy, N. C. From Savannah, Ga., over the Bimson line to Camak; then there is a gap, perhaps 60 miles, to Athens. When you reach Athens, which is one of the larger of the small cities of Georgia—it is a place of learning; a good, substantial place—you strike there the Illinois Central, the Southern Railway, the Seaboard Air Line—the three big trunk lines that go into Georgia. Also the Louisville & Nashville—four big trunk lines. The Gainesville Midland begins there at Athens and goes to Gainesville, which is 40 miles. The Gainesville Northwestern begins at Gainesville and goes directly toward Robertstown, to a point now which is 40 miles from Gainesville, and that is at the foot of the Blue Ridge Mountains—as far as you can go without more money. It is like the man who said that he had three reasons why he could not do a thing; one was he did not have enough money and the second was—but the other man said, "Stop, you have stated reason enough."

You begin at the other end, at Murphy, and there is a short line running through Blue Ridge and to Haysville, N. C., right directly toward Helen or Robertston, where the road has been graded, and they fell down because they did not have the rails and crossties. But the road is graded. Then 22 miles more, and you reach Helen or Robertston, the terminus of the Gainesville & Northwestern Railroad. Thus you have only a gap of 40 miles from Athens to Murphy, N. C., but direct long line from Knoxville, Tenn., to Savannah. So the present short lines are all on the direct line from Knoxville to Savannah.

You will take the Gainesville Midland that I represent, and anticipating that some day these lines would be through lines, this road was constructed, first answering the chairman's question, in 1882, practically by a donation. The city of Gainesville, for instance, donated \$50,000 and other people did the same thing, and Congressman Candler, who was the president of it and whom I suppose you knew. He originated it. It broke in 1897, went through the hands of the receiver, and was in litigation. The Louisville & Nashville owned it, but they had got their bonds in such shape, and I made such a hard fight as representing the stockholders and investors there, that

they gave us an option on it that they would cut loose and sell it out at \$3,000 a mile. They sold out for that and we bought it, and I went to Savannah and organized a company of Savannah people almost entirely; in fact, all Georgia money.

They put in the money, which aggregated \$165,000, increased it to \$661,000, and broadened its gauge and extended it to Athens. At that time it had not reached Athens. We extended it to Athens and made it a broad gauge. They then had a little narrow-gauge branch to Monroe, Ga., a short branch to a point named Monroe. They ran on for a number of years and saw great prospects. They then pledged and put up \$661,000 worth of bonds, syndicated them and pledged them, and issued what is known as coupon notes, \$325,000 of them, and borrowed that much money to broaden the Monroe branch, and buy terminals, and they are now paying interest on the \$325,000 regularly. But they agreed that for three years they would suspend interest on the original investment of \$661,000. This was in 1913. In 1916 they suspended interest on \$661,000 for another three years, to 1919, and suspended interest on the \$661,000, paying interest on the \$325,000.

Now, anticipating that some day this would be one of the big lines, a big trunk line from the west to the ocean or to the coast, they went into the heart of Gainesville, a town of 10,000, and established terminals within 300 feet of the public square. The Southern Railway is a mile out. It is the only short line tapping the Southern Railway from the South Carolina line to Atlanta that does not belong to the Southern. Everything else in our section, as Senator Underwood said a little while ago, was merely a feeder to the Southern Railway. The Southern does not do anything except just let the people build up as they see fit along their lines and run it down to the main lines.

The CHAIRMAN. I will state that the hour of 12 o'clock is the hour at which the committee recesses, and the committee understands, or the majority of them have decided, that we will recess until to-morrow morning at 10 o'clock, at which time you can finish your statement to the committee.

(Accordingly, at 12 o'clock noon, the committee adjourned until January 16, 1918, at 10 o'clock a. m.)

GOVERNMENT CONTROL AND OPERATION OF RAILROADS.

WEDNESDAY, JANUARY 16, 1918.

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE COMMERCE,
Washington, D. C.

The committee met at 10 o'clock a. m., pursuant to adjournment, Senator Smith of South Carolina (chairman), presiding.

STATEMENT OF MR. H. H. DEAN—Continued.

The CHAIRMAN. The committee will come to order.

Mr. DEAN. I am used to speaking standing, and I do not think I understand just exactly how to navigate sitting.

Gentlemen, without repeating anything that I said yesterday, I was just on the point of explaining the system which had been built up here, looking forward, of course, to a trunk line some day, and that the Midland had prepared and had purchased these terminals at all these points—the one at Athens for about \$225,000. They put the terminal right there in the heart of the city, and organized a terminal company called the Athens Terminal Co.

The Seaboard joined them with that, and the two owned half of it, exactly half and half of the bonds, perhaps placed the bonds outstanding. I presume the bonds are in the hands of the public, but the stock is owned jointly by those companies.

The Louisville & Nashville Railroad comes in at a separate station, the Central Railroad, which is now the Illinois Central Railroad, comes in at a separate station, and the Southern Railroad comes in at a separate station. If they unionize the roads why undoubtedly the freight, if not both the freight and the passengers, would, I think, as a matter of economy and expediency, adopt and consolidate at this terminal station.

The same would be true in Gainesville. The two roads now—the Gainesville Midland and the Gainesville Northwestern—use the Midland's terminal, which is right in the heart of the town and within a stone's throw of the biggest hotel there. The Southern Railroad is about a mile away. If they unionize that you would come into the Midland's depot yards certainly for freight, but perhaps not for through passengers.

The same is true at Winder. The Seaboard Air Line road passes Winder, which is a town of a population of somewhere around 5,000 people. About a mile out of town is built the terminal, and the Midland is right in the heart of the town. They have plenty of facilities there, and if you were to unionize you would use that.

So, you will see the necessity, even if that has not been done, as we believe, of course, it has, and it would be necessary to take the Midland into the system. The Midland was built up for the purpose of competition, purely. The Southern Railroad, running from New York to Atlanta—or rather from Atlanta to New York, to get it in New York—the Seaboard Air Line, running from Atlanta to New York, and the L. & N. Railroad, running from Atlanta to Charleston, run just like three fingers from the hand, or like three spokes from the hub of the wheel, and this road about 50 miles out of town plays right across them and plays the traffic back and forth. It handles the cars that are shipped in, and, of course, they have been soliciting traffic with the help of the Seaboard traffic, shipping it into Winder, to Athens, and up to Gainesville; the L. & N. Railroad, from Athens up to Gainesville; the Illinois Central Railroad from Athens up to Gainesville; the Southern Railroad playing back the other way and taking the southern traffic, carrying it down to Monroe and Winder and to the intermediate points.

The Southern Railroad has a branch line to Athens. But at all other points it gets its traffic there. The Gainesville & Northwestern at these present times, you might say, is practically a Government enterprise.

The two main businesses that were expected to supply the railroad, to and fro, were the large timber tracts in the Blue Ridge Mountains. There is a concern that is now operating the mill up there, the name of which is the Morse Bros. Lumber Co., a company of Rochester, N. Y., or from there. They own a hundred and some odd thousand acres of the timberland, and they built a \$250,000 mill at the terminus of this Gainesville & Northwestern Railroad, and they are now supplying hardwood timber to the Government for ships.

Of course, originally it was built without any thought of the war. It was commenced in 1913, to be used for general commercial business; but at the present time, as Mr. Morse told me the other day, they laid an embargo on every bit of his goods except what the Government would take. He was selling what the Government would take, and what the Government would not take he was stacking up in his yards until the time that the war was over, and he could sell it. He just got started, and that railroad was constructed for that purpose. There were some voluntary contributions to it, but the men who owned the timber tracts put up practically all of the money for the railroad.

The next is what we call the pyrites mine. They are now beginning the construction of a branch road to this mine.

They have had a number of Government experts down there, and it has been estimated that there are at least 20,000,000 tons of this ore. It assays at least 46 per cent of sulphur, and out of that they expect to get some sulphur for munitions, and also for fertilizer, which is now quite as important a product as anything else in this war.

The Government came down there and it looked like such an impossibility to have the branch railroad constructed in time on account of the difficulty of getting the rails, that they actually stated to the county there that they would pay half of the expense of building a dirt road, and said, "If you construct a dirt road for this ore until the railroad is completed, we will pay half the expense until the

railroad is completed," and so they put their first money in Georgia on that road, and they are now working on that road.

Senator TOWNSEND. You say the Government has done that?

Mr. DEAN. Yes; the Government is paying half of the expense for the construction of this dirt road, simply to reach this one product, and the county pays the other half. The railroad, I think, will be completed in about a month, and probably before the dirt road is, because they can work in worse weather on the making of the railroad than they can constructing dirt road.

Just as quick as that was done, they bought engines and cars to run a tram from the mine to the Gainesville & Northwestern. Now, the tram road does not belong to the Gainesville & Northwestern, but it belongs to the mine. The mine owners themselves paid for that railroad, and all they do is just simply to haul the cars, and the Gainesville & Northwestern is expected to haul the cars; they take them out and load them, and the Gainesville & Northwestern will pick them up. They tap the Gainesville & Northwestern at a point about a mile out from Gainesville.

When it gets there, the Gainesville & Northwestern, in order to keep this independent line, which I stated yesterday was the only independent line between Gainesville and Atlanta, going, they take the cars and they carry them down to the Seaboard in Georgia, and divide the freight with the Midland, delivering it to the other roads to carry it in to its destination.

We have at Gainesville, though it is a comparatively small town, with a population of about 10,000, which include the cotton-seed mills—

Senator CUMMINS. I want to get my mind straightened out on what you were discussing. You are speaking not of the compensation, but of the taking of the property away from these short roads?

Mr. DEAN. That is one; yes, sir; because I thought I was reaching up directly to some statement of that. I saw Mr. Payne; I met him yesterday, and there was some doubt as to whether some of the branch lines had been taken over.

The Chair stated yesterday to Mr. Robinson, when he was making this preliminary statement, that the committee wanted to obtain a line on the situation as to the small roads, as it would apply to a large number, perhaps, of small roads, and then wanted a statement of some specific instances as to which it was desired we should take up a discussion of amendments and compensation, and I was just now explaining the situation of these two roads, their physical situation, and coming now to their indebtedness. Then I want to discuss these amendments.

Senator CUMMINS. And you will, please, before you finish, point out to us how we can have the President take over any roads that he does not want to.

Mr. DEAN. Of course, my position is that he has already taken them over.

Senator TOWNSEND. Have you received any notice from the Government?

Mr. DEAN. Yes, sir; we received notice. As I understand it, every railroad man in the State of Georgia and in the United States has received instructions to unify all the railroads and to adopt this new demurrage law, with a recital prepared in Secretary McAdoo's

office, reciting that, whereas the President had taken over all of the railroads in the United States——

The CHAIRMAN. Have you a copy of the order that was served on you?

Mr. DEAN. I have a copy of two orders, and we are prepared to file those this morning with the committee.

The CHAIRMAN. I would like to have you put them in.

Mr. DEAN. Yes; I would like to put them in this morning.

Senator CUMMINS. It seems to me that the first thing that ought to be done is to have the Director General make perfectly clear what roads he is taking over and what roads he is not.

Mr. DEAN. If you will allow me to digress, I will go into that question first.

Senator KELLOGG. I do not see any object in our discussing whether Mr. McAdoo has or has not taken them over. He is the man who should decide whether he has done that or not.

Senator CUMMINS. Now, assuming that the act of 1916 is broad enough to authorize him to take these roads over, then it is a question first whether he has taken them over?

Senator KELLOGG. I do not see the reason for the witnesses coming here and showing why he is taking them over and not taking others.

The CHAIRMAN. I thought it would be well for this order to go into the record, so the committee could be informed of the attitude of the Director General.

Senator POMERENE. I agree with Senator Kellogg, that the Director General himself can state that very quickly, and there might be a conflict of opinion here between witnesses, in which case we would be diverted here to a discussion of somewhat immaterial points. This witness might take the view of it that he has been taken over and other witnesses might take the view that they have not. We would then have an issue here that is not of the greatest materiality and which could be stated by the Director General in a very few minutes, I take it. I assume he knows what roads he has taken over.

Senator CUMMINS. I do not suppose we will determine for the President what roads he will take over and what he shall not.

Senator POMERENE. No.

Senator KELLOGG. That is what prompted my remarks.

Senator CUMMINS. All we are interested in is seeing that he has the authority to take them over or not, as his discretion may lead him to do.

Senator TOWNSEND. Is there not another point involved? I agree with you on that abstract proposition; whether he has taken them over or not does not amount to very much. But the witness here is describing a condition of the roads which, if they are taken over, will involve a basis of compensation that may be different from the general rule.

Senator KELLOGG. That is quite right as to that point, I admit, but he is not; he is discussing here why they should be taken over.

Senator TOWNSEND. I do not think we are particularly interested in that.

Commissioner ANDERSON. Mr. Chairman, will it illuminate the proposition at all if I state one or two historic facts which led up to the proclamation?

The CHAIRMAN. We would be glad to hear you, Commissioner Anderson.

Commissioner ANDERSON. What happened was that it then appeared there was something like 1,800 railroads, and there was some discussion with the Director General as to what ought to be done. It was the opinion reached that notice ought to be sent by telegraph to the various lists of roads, so that there could be no doubt in the mind of any responsible railroad manager that any order issued, which properly affected that road, was operative on that road. Thereupon a general order was made by the Director General, who, of course, had no knowledge of the details of many of the roads; lists were furnished by the Secretary of the Interstate Commerce Commission, drawn from our records, and typical telegrams were sent by the clerks to the lists thus selected.

In the proclamation itself is language which intimates that we prevised this situation of doubt, that it was seen certain properties would be taken in that would not be necessary in the public interest, and therefore it was stated that they might be hereafter relinquished to their owners. It was also stated that certain properties, having interurbans particularly in mind, might hereafter be found necessary, and that suspended purpose was indicated.

Now, I am informed that this question of what properties ought to be taken in in order to make efficient the national unified control for war, and the national purposes, is under almost constant examination in the offices of the Director General. Undoubtedly they are there considering not merely that which is essential as a transportation facility but that which ought to be taken in lest, being left out, the owners thereof may be unjustly treated. That sifting process is going on hour by hour and day by day now in the office.

The CHAIRMAN. There is no doubt in the minds of those who are drafting this legislation, from the administration's standpoint, that the act of 1916 includes all railroads under the term "system"?

Commissioner ANDERSON. No, sir; I do not understand there is any doubt. I think we could even take in a jitney system if it was necessary in the national defense, and run it down to a cantonment or a shipyard—anything which is transportation and which is found essential.

Senator CUMMINS. You do not look upon the proposed legislation as affecting that question at all?

Commissioner ANDERSON. The proposed legislation?

Senator CUMMINS. The proposed legislation.

Commissioner ANDERSON. No, sir.

Senator CUMMINS. This bill neither enlarges nor diminishes from your point of view the authority of the President to take over such railroads as he desires to take over?

Commissioner ANDERSON. Precisely.

Senator CUMMINS. I think therefore that unless some one has an idea of changing the authority, or making it mandatory in some respect, that testimony in regard to whether a road ought to be taken over or not will give us very little light upon the duty we are about to perform.

Commissioner ANDERSON. I think you will listen at great length and get very little illumination, judging from what I have been told is going on, with reference to the same problem in the offices of

the Director General. I may add this, Senator, that it is our belief, certainly it is our desire, that under section 3 every person or corporation injured in this taking over shall have his or its just rights to just compensation fully protected.

Mr. BIRD M. ROBINSON. Mr. Chairman, this situation as it is now developing places us in this position: We have received notice that the Director General has taken charge of our properties. We are receiving directions as to what to do, and we are now told that some five or six hundred of our lines are not included. Under those conditions we may not be interested directly in this bill, but I think that this committee ought to ascertain in some way, if it be possible, what that status is before we present our proof. Because if we are to present our proof we have only one of two angles to present it from, and if there is any disposition to say that these roads have not been taken over then we want to show this committee the injustice which will be done if they are not taken over, the serious effect upon a very large mileage and a very large amount of bonded indebtedness; and as far as I am concerned I do not think we ought to present our proof here until we know the angle from which we should address the committee.

Senator CUMMINS. Do you think, Mr. Robinson, until the Government reaches the conclusion—I mean the Executive branch of the Government—that it does not want to take your road, that you should ask us to make some provision for compensation because the Government does not want to take it?

Mr. ROBINSON. If we can demonstrate to you that it is going to be seriously detrimental to us and that we are thereby going to be injured, we ought to be permitted to show that fact to you, so that you can take it into consideration in whatever action you determine to take.

Senator CUMMINS. Then we are put in this position: We are asked to declare or to determine a standard of compensation, because the Government does take one road and find another standard of compensation because it does not take another road.

Mr. ROBINSON. That is assuming, Senator, that we are asking for compensation. I ask you to take that into consideration in whatever action you take, so that you might be informed as to the full effect of any act you pass.

Senator POMERENE. In brief, how do you claim these certain roads will be injured if they are not taken over?

Mr. ROBINSON. In the first place, the Government will have leased certain tracks and certain roads which it owns, so far as the use of it is concerned; it has a large volume of equipment; it has the cars and things of that kind, and it will necessarily proceed to utilize those tracks and those cars just as far as it is possible, and not giving anything to any branch line, because when they do give anything to the branch line they must give that branch line a portion of the revenue, whereas if they can handle it on their own tracks, they will pay nothing, and thereby they take from the branch line the revenue that it has to a very considerable extent. If it be a competitive line, Senator, the Director General has already directed all of the lines to discontinue solicitation of business or competing in any way, and when the two lines exist, one is the Government line and the other is the little independent line, they are going to have no privilege of solici-

tation, and the result will be the shipment by the Government line and absolute starvation of the little lines.

Senator POMERENE. In other words, you want every road and every business institution to be reimbursed for any loss that they sustain, directly or indirectly, because of this war?

Mr. ROBINSON. If it is the result of the act of the Government, I think that follows. But our position is this: If we are not included, then the proof that we are going to present to you here is not applicable and does not go to the point.

Senator KELLOGG. Can you tell me how we can find out whether you are included or not?

Mr. ROBINSON. We say we are, and we are offering here the order of the President or the proclamation to show that we are already in. But the committee was indicating that they did not regard this as evidence, and if they do not regard those orders of the President as evidence, they might call the Director General to tell what the situation is. And if he does not tell them, we can not tell them. We are not able to learn under existing conditions.

Senator CUMMINS. It is an unsatisfactory problem, I agree, but I do not see how we can solve this question, whether you can not take any unless you take them all.

Senator UNDERWOOD. The main purpose of this bill is not, of course, to fix the damages for the taking over, because that is for the court to determine, but to work out the problem, by the President, through his agent, in order to reach an understanding with the roads as to what a fair compensation is. No matter what we put in here about it, if the executive committee of the Government decides to take over certain roads, they will reach an understanding as to what is fair compensation, and, of course, if you are not taken over, you have no standing in the courts.

Mr. ROBINSON. We might have a standing in the courts, might we not, Senator?

Senator UNDERWOOD. I do not see how you can.

Mr. ROBINSON. I do not think I have made myself quite clear.

Senator UNDERWOOD. I see your point.

Senator KELLOGG. It is absolutely impossible for the Government to pay damages to a railroad that is incidentally injured because some other railroad is taken over.

Mr. ROBINSON. My position, as I submitted it to the committee, is this: That the proof which we are going to submit other than by the introduction of these orders of the commission would not be applicable to the situation, because, if we are not taken over, the proof that we are going to submit to you would not be of any interest to you, and therefore I suggested that we do not proceed to present additional proof before this committee, or evidence, until we get some line on that fact so that we might direct our attention directly to the points for the committee to consider.

The CHAIRMAN. It would apply to some of the roads that he does take over, as suggested by Senator Underwood.

Mr. ROBINSON. The announcement was made before the committee of Representatives of the House that some 600 roads were probably not taken over, and therefore a very large per cent of the roads we represent would necessarily be included in that.

Senator CUMMINS. The difficulty of your program is this, that long before you know this bill is reported it will be passed, and therefore you might not have the opportunity that you have in mind.

Mr. ROBINSON. I had some thought that this committee could ascertain from the director general without material delay.

Senator UNDERWOOD. Is not the practical question that confronts us the fact that we are not buying the railroads? There is no provision in the legislation here, Mr. Robinson, to take them over, and the question whether you ought to be taken over or not seems to rest with the director general and with the President, and not with us. In the event that you are taken over, you want legislation that will fairly protect your interests. It seems to me that you can address yourself to that question, and we can prepare the bill so that if you are taken over your interests will be properly protected. But I do not know where we can handle the problem whether you are to be taken over or are not to be taken over. We are not working on that question.

Mr. ROBINSON. I thought the committee could determine that question, and it is its duty to determine that question, in view of the fact that the Government has already, as we believe, actually done so. But if the committee wants to hear our proof, we will present it.

Senator TOWNSEND. I am not clear, Mr. Chairman, as some of the Senators are, that the Government would not be liable for damages for taking over of one railroad and not taking another, with which there existed certain vested rights, rights that had been established under the laws of the Congress as to that second road, whereby that road was damaged. I am inclined to believe that they would have a standing and that if they show that by the taking over of a part of the railroads of the country another portion of them was damaged in the rights which the Government had established itself or permitted, that the second party would not be entitled to a hearing.

Senator McLEAN. Your idea is, Senator Townsend, that they will be compelled to compete with the Government?

Senator TOWNSEND. Yes.

Senator McLEAN. And it might be decidedly unfair?

Senator TOWNSEND. Under those suggestions, it might be borne in mind that the country will be routing freight and directing freight to go over a Government line which would otherwise go over a non-controlled line, and in that way that the Government could deprive the noncontrolled line of any freight whatever, except such classes of freight which it did not want to handle, if it chose to operate that way?

Mr. ROBINSON. We have statutes against unfair competition.

Senator TOWNSEND. I think that is much broader than the question to be determined in this connection. My idea is that these short-line railroads, if they claim a different standard should be fixed for the compensation of such of them as may be taken over, should go ahead and present their views as to what that standard is, because that is the question immediately under consideration.

Senator CUMMINS. I want to get it clear. Is there any question that, if the short line is taken over and the Government sees fit to divert traffic from that line to some other line where it thinks it can be moved more cheaply and more expeditiously, there is a vested right

in the short line to the traffic and that our law must provide some compensation for the diversion of that traffic?

Senator TOWNSEND. No; I never suggested anything of that kind and never even thought of it, but I do suggest this, that the taking over of these roads will necessitate the Government compensating them. Of course, that is fundamental; and if the standard which is provided in the bill is not the proper standard for these roads, they ought to present their case and give us all the information they have on the subject. Many of them will be taken over, and what we are particularly interested in is fixing a fair standard, so that litigation may be avoided and the situation not unnecessarily complicated. I do not think it could be said that the right of a road to receive shipments of freight might be regarded as a vested right, because I do not understand that the principle of vested right applies to matters of that kind. The right of a road, however, to do business and to exercise its franchise or the privileges of its franchise, the guaranties which are conveyed to it in its charter, might be a vested right and probably is a vested right. So I think that is a very broad question. I am interested in hearing what these short lines have to say about this standard of compensation which should be provided.

The CHAIRMAN. You can address yourself to that point and as to whether or not the Government will include or will exclude any of these short lines, and we will try to cross that bridge when we come to it.

Senator GORE. I do not think it is as much a question of the vested rights on the part of the roads as it is a matter of equity. It is my idea that we should see whether there is a state of facts that distinguishes those roads from the roads taken by the Director General. If it is a different road, it is to be treated altogether differently.

The CHAIRMAN. To show that the status of the short lines is different from the others and therefore should receive different treatment?

Senator GORE. That is the point.

Mr. DEAN. Gentlemen, if you will excuse me, I would like to introduce in evidence the record of the situation applying to these short lines. Of course, the act of 1916 is the law and therefore not necessarily to be put in evidence, but will be considered in. Next, we want to put in the proclamation of the President of the United States, where he says he has taken the control of certain systems of transportation.

The first is a telegram which has been addressed to each of the roads, and is in this language:

OFFICE OF THE DIRECTOR GENERAL OF RAILROADS,
Washington, December 28, 1917.

To the presidents and directors of all railroad companies:

Having assumed the duties imposed upon me by and in pursuance of the proclamation of the President, dated December 26, 1917, you will, until otherwise ordered, continue the operation of your road in conformity with said proclamation. You are requested to make every possible effort to increase efficiency and to move traffic by the most convenient and expeditious routes.

I confidently count on your hearty cooperation. It is only through united effort, unselfish service, and effective work that this war can be won and America's future be secured.

W. G. McADOO,
Director General of Railroads.

Senator TOWNSEND. Was this sent directly to you?

Mr. DEAN. This is one that has been handed to me by Mr. Robinson, and which was sent directly to his road. But each road had one directed to it; yes.

The CHAIRMAN. Was this given to your road directly?

Mr. DEAN. I have not got mine here. Mr. Barker did not bring it with him; but every road got it.

Senator ROBINSON. I understood that the order came through your State commission?

Mr. DEAN. No; this came directly in the shape of a telegram.

Here is another one, dated January 5, 1918, from the Interstate Commerce Commission, Washington, D. C., to the president of the Gainesville & Northwestern Railroad Co.

INTERSTATE COMMERCE COMMISSION.

Washington, January 5, 1918.

To the PRESIDENT OF GAINESVILLE & N. W. R. R. Co.

DEAR SIR: By direction of the Director General of Railroads you will let me have by not later than January 15 the following information:

First. A statement showing the amount of capital your company will require to raise during the calendar year 1918, and also separately for the first six months of that calendar year (1) to meet all maturing bonds and note issues which have not already been provided for or which are not to be paid out of the cash resources of your company, showing dates of such maturities; (2) to pay for improvements, betterment, and construction work already contracted for and partially finished (this statement should show what portion, if any, of such work can be stopped now without detriment); (3) an approximate estimate of the capital which may be imperatively important to provide for other construction work, improvements, and betterments, including additional terminals and new equipment, showing equipment separately; (4) an approximate estimate of the capital which, in the judgment of the management of your company, it is desirable to provide for the above purposes, but for which the demand is not absolutely necessary for the protection of the property or for the maintenance of its earnings.

Second. A statement as to the character of stocks, bonds, or notes with which your company expects to be able to raise the capital so required.

The above information is to be immediately transmitted and may be supplemented later with such additions as become only later available.

Very truly, yours,

W. M. DANIELS, *Commissioner*.

Senator CUMMINS. Mr. Daniels is a member of the Interstate Commerce Commission.

Mr. DEAN. Here is another order, of date January 7, 1918, which reads:

ORDER.

At a general session of the Interstate Commerce Commission held at its office in Washington, D. C., on the 5th day of January, A. D. 1918.

In the matter of railway operating and financial returns for the year ending June 30, 1917.

It is ordered, That all common carriers by steam railroad subject to the provisions of the act to regulate commerce, as amended, and the owners of all railroads engaged in interstate commerce as therein defined, be, and they are hereby, severally required to submit to the Interstate Commerce Commission the statements specified hereunder, prepared by primary and general accounts or other indicated detail for the designated year only, in accordance with the itemization and forms of statements of like character included in the forms respectively prescribed for the annual reports of steam-railway companies to the said commission for the year ending June 30, 1916, suitably modified as to dates:

- (1) A statement of operating revenues for the year ending June 30, 1917.
- (2) A statement of operating expenses for the year ending June 30, 1917.

- (3) A statement of income account for the year ending June 30, 1917.
- (4) A statement of profit and loss account for the year ending June 30, 1917.
- (5) A statement of general balance sheet as of June 30, 1917.
- (6) A statement of the following items of railway mileage (single track):
 - (a) Number of miles of road owned on June 30, 1917.
 - (b) Number of miles of road operated on June 30, 1917.
 - (c) Average number of miles of road operated during year ending June 30, 1917.

It is further ordered, That if the entries appearing upon the books of a respondent do not fully show the transactions for the period of the report herein required, appropriate explanation shall be made in said report.

It is further ordered, That the aforesaid report shall be mailed in duplicate to the Bureau of Statistics, Interstate Commerce Commission, Washington, D. C., by January 25, 1918, and shall be attested under oath after the following form:

OATH.

State of ———. } ss:
County of ———. }

————— makes oath and says that he is ——— of ———, and that he has carefully examined the annexed report, and to the best of his knowledge and belief the entries contained in the said report have, so far as they relate to matters of account, been accurately taken from the said books of accounts and are in exact accordance therewith; that he believes that all other statements of fact contained in the said report are true, and that the said report is a correct and complete statement of the business and affairs of the above-named respondent in relation to the matters and things herein set forth.

Subscribed and sworn to before me, a ———, in and for the State and county above named, this — day of ———, 1918.

My commission expires ———.

By the Commission:

[SEAL]

GEORGE E. MCGINTY, *Secretary*.

Senator ROBINSON. How do you connect those with the Government ownership, regulation, and control of the roads?

Mr. DEAN. I just gave what we had received. There were quite a number of rules and orders received.

Senator POMERENE. That does not relate to Government control; that is simply a demand upon the Interstate Commerce Commission under the existing law for information that it has a right to require from the carrier anyway.

Mr. DEAN. We have others here.

Senator POMERENE. What are the dates of those telegrams?

Mr. DEAN. The first is dated December 28, 1917, the others are stamped received January 9 and dated January 7, 1918.

Senator POMERENE. Do you mean to say that that telegram from Mr. Daniels was suggested as a result of this proclamation issued by the President?

Mr. DEAN. Yes, sir.

Senator POMERENE. Was it simply a matter of routine administration by the Interstate Commerce Commission, without any reference to the President's proclamation?

Mr. DEAN. Well, we presumed that it was in pursuance of that proclamation. Of course we could not tell what was in their minds.

Senator POMERENE. That was the same date that the proclamation was issued?

Mr. DEAN. No, sir; that is December 28, and the others followed and they were dated January 5. This is signed by Mr. McAdoo; the proclamation is signed by Mr. McAdoo.

Senator CUMMINS. The first telegram is signed by Mr. McAdoo and the other two by the Interstate Commerce Commission?

Mr. DEAN. Yes, sir.

Senator WATSON. Commissioner Anderson says, Senator, that that statement was issued by the Interstate Commerce Commission at the request of the Director General.

The CHAIRMAN. These telegrams from the Interstate Commerce Commission, they were sent out at the instance of the Director General.

Commissioner ANDERSON. The Director General requested various members of the Interstate Commerce Commission to address themselves to various lines of inquiry and report to him.

Senator ROBINSON. That related to information which he probably wanted in order to inform himself so as to determine whether it was necessary for him to take over certain of the lines. That was in connection, probably, with the preliminary investigation that he was making.

Commissioner ANDERSON. Partly with reference to that and partly with reference to the financing burden which would fall upon the Government.

Senator ROBINSON. In the event that it did take them over?

Commissioner ANDERSON. Yes.

Mr. DEAN. Now, gentlemen, I want to give you something more. Here is order No. 2 now, dated December 29, 1917, sent from Director General of railroads. It is quite a long order, and is signed by Mr. McAdoo, Director General of Railroads.

(The order referred to is as follows:)

GENERAL ORDER NO. 2.

OFFICE OF THE DIRECTOR GENERAL OF RAILROADS,
Washington, D. C., December 29, 1917.

To the Chief Executives of Railroads:

Pursuant to the authority vested in me by the President of the United States in his proclamation of December 26, 1917, wherein it was stated that for purposes of accounting, possession, and control of the railroads shall date from 12 o'clock midnight on December 31, 1917, you are notified that, until otherwise directed, no changes in the present methods of accounting as prescribed by the Interstate Commerce Commission will be required. The accounts of your respective companies shall be closed as of December 31, 1917, and opened as of January 1, 1918, in the same manner as they have heretofore been handled at the close of one fiscal period and the beginning of another, and in the same manner that you should have handled your accounts had the Government not taken possession and control.

WILLIAM G. McADOO,
Director General of Railroads.

Senator TOWNSEND. Did you receive copies of all of those?

Mr. DEAN. We received copies of all of them. I have here also order No. 3, and it is signed by Mr. McAdoo, and dated January 8.

(The order referred to is as follows:)

ORDER NO. 3.

JANUARY 7, 1918.

All carriers by railroad, subject to the jurisdiction of the undersigned, are hereby ordered and directed forthwith to publish and file and to continue in effect until further order, tariffs effective January 21, 1918, wherein demurrage rules, regulations, and charges shall be changed so as to provide:

A. (1) Forty-eight hours (two days) free time for loading or unloading on all commodities.

(2) Twenty-four hours (one day) free time on cars held for any other purpose permitted by tariff.

B. Demurrage charges per car per day or fraction of a day until car is released, as follows: Three dollars for the first day, \$4 for the second day, and for each succeeding additional day the charge to be increased \$1 in excess of that for the preceding day until a maximum charge of \$10 per car per day shall be reached on the eighth day of the detention beyond free time, the charge thereafter to be \$10 per car per day or fraction thereof. These charges will supersede all those named in existing tariffs applicable to domestic freight, and specifically contemplate the cancellation of all average agreement provisions of existing tariffs.

No change is authorized hereby to be made in demurrage rules, regulations, and charges applying on foreign export freight awaiting ships at export points.

Upon my request, the Interstate Commerce Commission has issued fifteenth section order No. 225 authorizing the filing of tariffs to accord with this order to become effective January 21, 1918, on one day's notice.

Carriers shall immediately file said tariffs with appropriate State commissions or other State authorities.

Dated at Washington, this fifth day of January, 1918.

W. G. McADOO,
Director General of Railroads.

There is another letter to all railroad officers and employees, which I will read:

DIRECTOR GENERAL OF RAILROADS,
INTERSTATE COMMERCE COMMISSION BUILDING,
Washington, January 8, 1918.

To all railroad officers and employees:

The Government of the United States having assumed possession and control of the railroads for the period of the present war with Germany, it becomes more than ever obligatory upon every officer and employee of the railroads to apply himself with unreserved energy and unquestioned loyalty to his work.

The supreme interests of the Nation have compelled the drafting of a great army of our best young men and sending them to the bloody fields of France to fight for the lives and liberties of those who stay at home. The sacrifices we are exacting of these noble American boys call to us who stay at home with an irresistible appeal to support them with our most unselfish labor and effort in the work we must do at home, if our armies are to save America from the serious dangers that confront her. Upon the railroads rests a grave responsibility for the success of the war. The railroads can not be efficiently operated without the whole-hearted and loyal support of everyone in the service from the highest to the lowest.

I earnestly appeal to you to apply yourselves with new devotion and energy to your work, to keep trains moving on schedule time, and to meet the demands upon the transportation lines, so that our soldiers and sailors may want for nothing which will enable them to fight the enemy to a standstill and win a glorious victory for United America.

Every railroad officer and employee is now, in effect, in the service of the United States, and every officer and employee is just as important a factor in winning the war as the men in uniform who are fighting in the trenches.

I am giving careful consideration to the problems of railroad employees, and every effort will be made to deal with these problems justly and fairly and at the earliest possible moment. There should be a new incentive to everyone in railroad service while under Government direction to acquit himself with honor and credit to himself and to the country.

W. G. McADOO,
Director General of Railroads.

N. B.—The Director General of Railroads requests that the above statement be posted by all railroads.

Senator POMERENE. That might apply to all citizens as well?

Mr. DEAN. Yes, sir.

Senator KELLOGG. I understand that those orders were sent to every single railroad in the United States?

Mr. DEAN. Yes, sir.

Senator KELLOGG. What is the use of going on and detailing each railroad that they were sent to?

The CHAIRMAN. It was clearly in the mind of the Director General that he was taking over all the railroads, taking the word "systems" to mean all railroads. That point, as we have already said, need not be discussed here. We will just assume that they are all in now for the purposes of this committee, and you can address yourself now to the question of what treatment you think you are entitled to under the order.

Mr. DEAN. If you will permit me, I will just introduce one more paper now.

Senator UNDERWOOD. Did you introduce those orders?

Mr. DEAN. Yes, sir; we are introducing these into the record. This clipping from the Constitution, of Atlanta, Ga., came in yesterday and is signed by C. M. Candler, as chairman of the State railroad commission. I would like to put that in evidence.

NEW DEMURRAGE RATES IN EFFECT JANUARY 21—CHAIRMAN CANDLER ISSUES FIRST ORDER UNDER DIRECTION OF DIRECTOR GENERAL M'ADOO.

Chairman C. M. Candler, of the State railroad commission, has just issued the commission's first order under direction of the Federal Director General of the railroads.

This order was to put into effect in Georgia the new scale of demurrage rates recently promulgated by the Director General. Chairman Candler ordered the new charges to take effect in Georgia January 21.

The order is as follows:

"SPECIAL EMERGENCY ORDER NO. 1.

"Whereas the President of the United States in the exercise of authority vested in him issued his proclamation, bearing date December 26, 1917, directing the taking possession, assumption, and control of every system of transportation in the United States; and

"Whereas said proclamation provided as follows:

"'Until and except so far as said director shall from time to time otherwise by general or special orders determine, such systems of transportation shall remain subject to all existing statutes and orders of the Interstate Commerce Commission and to all statutes and orders of regulating commissions of the various States in which said systems or any part thereof may be situated. But any orders, general or special, hereafter made by said director shall have paramount authority and be obeyed as such'; and

"Whereas the Director General of railroads has issued his order No. 3, dated January 5, 1918, effective January 21, 1918, so as to provide as follows:

"'1. Forty-eight hours (two days) free time for loading or unloading on all commodities.

"'2. Twenty-four hours (one day) free time on cars held for any other purpose permitted by tariff. Demurrage charges per car per day or fraction of a day until car is released, as follows: Three dollars for the first day, \$4 for the second day, and for each succeeding additional day the charge to be increased \$1 in excess of that for the preceding day until a maximum charge of \$10 per car per day shall be reached on the eighth day of detention beyond free time. The charge thereafter to be \$10 per car per day or fraction thereof. These charges will supersede all those named in existing tariffs applicable to domestic freight and specifically contemplate the cancellation of all average agreement provisions of existing tariffs.

"'No change is authorized hereby to be made in demurrage rules, regulations, and charges applying on foreign export freight awaiting ships at export points. It is

"Ordered, That the carriers in Georgia are hereby authorized to file tariffs providing for the above prescribed demurrage charges, to be effective January 21, 1918, applicable to Georgia intrastate freight traffic.

"The demurrage charges and rules of this commission in conflict with the above-mentioned general order No. 3 of the Director General of railroads are hereby suspended until the further order of this commission.

"By order of the commission.

"C. M. CANDLER, *Chairman.*
"ALBERT COLLIER, *Secretary.*"

MR. DEAN. Now we come to the question of compensation. The two roads I represent propose amendments which would cover a very large number of all the short lines in the United States. The Midland is a bond-issue road. The Gainesville & Northwestern owes nothing. It is the one road in Georgia, and the only road in Georgia, that has not any bonds on it: it has preferred stock and common stock. The Gainesville Midland originally cost, as a narrow-gauge railroad, something like half a million dollars. It was sold out by a receiver and was purchased in 1905 by the present owners, was reorganized and bought at public outcry for \$165,000. A bond issue was put on for that, which was afterwards merged in a re-funding bond issue, and \$661,000 of those bonds were sold, and are owned by citizens, mostly of Savannah and some in Augusta. They paid interest awhile on it.

Senator POMERENE. What was the purpose of the bond issue?

MR. DEAN. It was for broadening the gauge of the road and extending it to the town of Athens. When they bought it it was a narrow-gauge fork, running down 10 miles and then forking to the right and going to Monroe, Ga., then going to the left and thence to Jefferson, Ga.

Senator POMERENE. This was for betterments?

MR. DEAN. Yes, sir; they broadened the gauge of the road and extended it to Athens, a new road, 18 miles of it, and spent every dollar of that money in broadening the gauge from Gainesville to Jefferson; building the new road from Jefferson to Athens and making it a broad-gauge road from Gainesville to Athens. They spent all of that money. That made the road from Belmont to Monroe, about 35 miles of road, still narrow gauge, and they operated several years that part, the narrow gauge, and the other part the broad gauge. They saw there were good earnings there, and the country was building up very rapidly, and so they said, "Now, we will just simply borrow the money and broaden the rest of it." So they made a bond issue and a trust issue—here is the paper—in which they pledged those \$661,000 worth of bonds, or most of them, issued \$325,000 of coupon notes drawing 6 per cent interest, and they took that money and broadened the rest of the road to a broad-gauge road to Monroe, giving for all practical purposes about a million dollar bond issue on the road.

Senator POMERENE. Let me see if I understand your statement. The bonds were issued, and you say they put up some collateral?

MR. DEAN. In other words, the owners of the road simply signed the note.

Senator POMERENE. The bonds were put up as collateral for this note?

MR. DEAN. The bonds were put up as collateral for the note; the money was borrowed, and the men who owned the bonds pledged them as collateral to the note. But the note was signed by the rail-

road, you understand, and became the indebtedness of the railroad with the bondholders' bonds as security.

Senator POMERENE. How much money was realized out of the sale of those bonds and from this note issue that you speak of?

Mr. DEAN. Well, the bonds were sold at par, the \$325,000—perhaps not the whole of it, but \$325,000 was sold.

Senator POMERENE. You mean the purchasers of the bonds then put them up as collateral for the loan the railroad made?

Mr. DEAN. The road made a loan and issued stock certificates or trust notes and borrowed the money to build the road. They could not get the money without making it a first mortgage. The only way they could make it a first mortgage would be for the first mortgage bondholders to agree to it and pledge their bonds until that money was first paid, making the \$325,000 a first issue, and that money then broadened the rest of the gauge down to Monroe, making it all a broad-gauge road. That was completed in 1914. They agreed to waive interest for three years, or until 1916, and when 1916 came they agreed to extend it for another three years, to 1919.

The earnings now for 12 years, beginning in 1905, are \$88,000. \$25,000, \$138,000, \$160,000, \$156,000, \$168,000, \$173,000, \$162,000. \$187,000, \$168,000, \$195,000, and in the last year \$207,000.

Instead of declaring a dividend, except paying the interest on these coupon notes, they have been putting the rest of that money back into improvements and betterments. The \$325,000 did not absolutely complete it, and they have been building that road up until they have gotten a fine system of railroad. It has been built purely on the competitive line, under the protection of the Sherman Act, so that they could go into Atlanta and go into the West and trade with these roads to carry freight over their lines and deliver it across the lines of the other.

The L. & N. would deliver freight on the Southern's tracks, and the trade with the Southern was to deliver freight on the L. & N.'s track, and the same with the Seaboard.

If the Government takes over those roads, those main lines, and shoots everything direct to these various towns, the Midland would be absolutely useless except to carry the little local freight back and forth to these intermediate towns. It never could haul a whole car of freight, practically; they would just simply carry the little stuff back and forth.

Senator KELLOGG. All these little local towns are served by the railroad, are they?

Mr. DEAN. All the roads of the State go to Athens. Two roads go to Winder, don't you see? They take those big lines, and all we have is those intermediate towns, with a thousand or fifteen hundred people in them. They would assassinate the little roads.

Senator CUMMINS. I do not believe in the standard, but then your compensation, according to the bill, is fixed on the basis of what you have done, not what may happen.

Mr. DEAN. I understand that, sir. We come now, gentlemen, to what would be fair compensation. You see, now, for the Midland, we have a road there of practically a million dollars, somewhere between \$950,000 and a million dollars, of actual issue, without any water in it at all. It is worth that. It has cost a lot more than that, because of parties buying it in at the receiver's sale. It, so far as the

books would show, paid an average dividend, or average net earnings, during the last three years of \$22,000 or \$25,000; one earning shows \$28,000 and the last one \$22,000. Of course, perhaps they do not keep their books as systematically as they should do. But it really went into betterments and improvements and the building up of trestles and the putting in of dirt trestles, ballasting the road, putting in new cross-ties, balancing it up, putting in new rails.

As I understand, the only system of just compensation known to the Constitution, if you take properties as a whole, is the value of the property taken. That is fixed by the Constitution, it is not necessary to go any further than that; that is the limit. If you go to take it for a temporary use, I do not know that there is any other rule on this except what would be a rental value of the property. Suppose you take two stores, for instance, and one is occupied; suppose a man gets a hundred dollars a month for it and is satisfied with it. Suppose the other, which is vacant, and perhaps by bad management or because of the fact that it is not completed, etc. But it is as good a stand as the other, and you come along and want it, and it is said, "Jones gets a hundred dollars for his store, and it is just the same kind of a place, just as good for trade, and I want \$100 a month." But the argument is advanced that you are getting nothing now, or you might let it out for a peanut stand, or something of that kind, but this is all I will pay you. The law would say that he is entitled to the rental of that property which would be the fair value based on the value of the property. If you confiscate a vacant lot and take it for three years you can not say the rental would be the rental as occupied for a peanut stand, but it would be the rental value for the time that it is taken.

Suppose we go a step farther, and say that I am in the hardware business; you come along and say, "I want your hardware store for three years, what are you going to get out of it?" And suppose the amount is \$500 a month and it is all right, "I will pay you \$500 a month," as an illustration. You take it for three years and you sell out all the hardware stock and get in a stock to be used as a drug-store and run it for three years. In the meantime the other hardware stores get the trade of that store for the three years, and when you turn that store back as a hardware store it is useless.

Senator KELLOGG. That is one of the beauties of Government ownership.

Mr. DEAN. You may call it a beauty.

Senator CUMMINS. No; if it was Government ownership, you know, you would get the full value of your property right from the start.

Mr. DEAN. The Government should not do an unjust thing. Gentlemen, we come here in a spirit of loyalty and we bow submissively to the demands of the Government. We are willing to surrender our property without litigation, but we do not think the Government should confiscate us and take the money and pay two and three and four times the price for everything else that it gets. If they want to build a ship they will spend everything they possibly can spend on it, plus 10 per cent. The more the contractor spends the bigger the per cent he gets out of it.

Senator CUMMINS. That same plan is pursued in the building of the cantonments, is it?

Mr. DEAN. Yes; the more he spends the more he gets, because it is the amount he spends, the cost plus 10 per cent.

Senator POMERENE. That is hardly fair to make that statement. It is not cost, plus 10 per cent. There are certain other limitations on that. The Government does not deal, perhaps, justly, but it does not become us to make an unjust statement.

Mr. DEAN. I wanted to state what I understood as to Camp Gordon—I do not know about the others at all. The man who got the contract got the cost plus 10, and with the proviso that in no event should he receive more than \$150,000. And that man had never received more than \$50,000 in his life before. I saw the happiest man that I ever saw in my life up at the Raleigh Hotel last night, and he was happy because he got a two-million-dollar contract from the Government to complete some improvements, and I said, "I understand you get half, don't you?" He said, "About that."

Senator CUMMINS. What do you think it ought to be?

Mr. DEAN. I think it ought to be the interest on the value of the property. Suppose you take our road now and occupy those terminals and throw the road away. The terminals are valuable, and we are looking forward to building up some time. That is worth the interest on the bonds. If you do not pay the interest on the bonds, it means a trail of receiverships.

Senator CUMMINS. The latter is a proposition that could be easily determined, but the former is one that will take us five or six years to determine if we did nothing else; but we have all the railway property in the United States.

Mr. DEAN. Let me address myself to the amendment that we offered here, and I think I can show that it would not take that language.

Senator CUMMINS. It would not take that language for your road, but if applied to all the roads of the United States it might.

Mr. DEAN. I do not think it would take that language for any of them. The first four lines of the bill, which we understand and call the Anderson bill, and which, if they will just take my amendments in there, we feel is a very excellent bill.

Strike out the first four lines there of the first page and put this in:

It shall receive just compensation as a rental for the use of its property, and in arriving at such compensation the President is authorized to guarantee an income at an annual rate equivalent to its average net railway operating income for three years ending June 30, 1917.

You might say that there was not enough difference there to warrant changing it. The bill has a coloring which, if passed, gives it a congressional sanction that the net railway earnings is just compensation. We do not think that Congress should so adjudicate it. We think that Congress should give it a basis, but not say here that it is an adjudication.

Senator UNDERWOOD. That might direct itself to the President deciding the case on the broad temporary control, but it would not tie the hands of the court.

Mr. DEAN. No, sir; but just to enlarge the bill. We might like to have it impartial, "It shall receive."

Commissioner ANDERSON. May I have that amendment read again to me?

Mr. DEAN. Certainly, sir. It is after the word "control," on line 8. Take the reading of it from the word "control."

* * * that during the period of such Federal control it shall receive just compensation as a rental for the use of its property, and in arriving at such compensation the President is authorized to guarantee an income at an annual rate equivalent to its average net railway operating income for three years ending June 30, 1917.

That is with this proviso:

Provided, That in cases where any such carrier has been putting its earnings back into improvements and betterments, or where such carrier has not been operating for three years prior to June 30, 1917, or when the interest obligations of such carrier exceed its average net railway operating income earnings, or where there are other peculiar circumstances which would make such standard annual rental unjust or inequitable the President may agree with such carrier upon some other just and equitable basis.

Now, gentlemen, that just simply does nothing more nor less than give the President a little wider discretion to treat with the roads on a fair and just and equitable basis if he wishes to. It does not compel him to do it; it does not direct him to do it; it just simply says if that is right, why you are authorized to do it.

But for that the President might say: "Now, Mr. Road, we are anxious to settle with you." That bill is not sufficient, it does not provide just compensation. But he would say, "I am helpless; my hands are tied; I can not do it; I will write a letter to the Court of Claims and say that you ought to have this money, but you have to go to the Court of Claims to get it." You might have 800 lawsuits to get things which the President, with one stroke of his pen, could settle—every one of them.

Senator CUMMINS. Don't you think that covers every railroad in the United States?

Mr. DEAN. Yes, sir.

Senator CUMMINS. And you might simply say to the President, "You may enter into any agreement that in your judgment ought to be made with the railroads"; you might say that in a few words by just limiting the authority conferred upon him to make any agreement that he sees fit.

Mr. DEAN. This is only a temporary agreement, as I understand it, and it is only a temporary use, and as an emergency measure, Senator, it ought to be allowed. If you have not got the confidence in the President, put it in some one else in whom you have the confidence, but to have 800 lawsuits, there is not anyone of us who has a grandchild who will see the last one settled.

Senator CUMMINS. Don't you see there that it has as a basis that it is not to exceed the earnings of the roads during the last quarter of 1917?

Mr. DEAN. Suppose it never made any earnings; can you take it for nothing?

Senator CUMMINS. You take it for nearly nothing, I presume.

Mr. DEAN. If you do you will see the worst panic that ever came off in the United States. The railroad will go first, then the bank that has the bonds as collateral will call on the owners of the bonds to pay the notes, your credit is no longer good, because your collateral has been destroyed; so he will sell the bonds out at the best price; the owner of the bonds will go, and then the bank will go, and every

depositor of the bank will go—you will have a trail of receiver-ships.

Senator CUMMINS. If it did not have any income at all the Government does not need it and the Government might take it without any injustice, might it not?

Mr. DEAN. You might just as well try to operate a rural free-delivery route in a sparsely settled community as to try to run one of these short-line roads in opposition to the Government's main line, when it has issued an order to give no freight and no box cars or anything to any but the Government's line.

Senator CUMMINS. I see the point of that suggestion, but suppose it was not receiving any operating income to start with?

Mr. DEAN. You know, all these roads begin by help from the community. They donate it, and then the lands build up and the towns grow. The boy comes to be 21 before he is worth anything to you. Are you going to cut him down in the prime of his life just because he is not making a hundred thousand dollars a year, and then take a man in his old age and give him a handsome pension for all time to come, at \$10,000, and cut the boy down when he is 21? He might be an Interstate Commerce Commissioner if he lived a few years.

Senator POMERENE. It is your view, then, that if a skilled promoter goes out and succeeds in getting a given amount of money and succeeds in building the road, that, in the judgment of any fair-minded man, should be a success, the Government should take that road over and pay for it?

Mr. DEAN. No, sir. I say if that road is not worth anything to the Government the Government should not pay anything for it.

Senator GORE. That is what I am thinking.

Mr. DEAN. When it comes to the test, and my roads are no good, say so, and we will simply take our losses and go.

Senator MCLEAN. All you want is the fair value?

Mr. DEAN. We want the fair value that the Constitution gives us, if we can ever get to it, and pending that time we want a fair man—and we take the President to be a fair man—he is put in the bill, and we are not excepting to that. He can treat us fair if he wants to.

Commissioner ANDERSON. If we amend section 2, as was proposed yesterday, that instead of limiting the President's rights so as to say not exceeding 90 per cent of a standard return, because some of these roads may not have any standard return, by providing that the President may authorize the payment or advance of larger sums, if necessary, to meet interest accruing during Federal control on valid outstanding debt obligations incurred on property used for carrier purposes, and if you take, in connection with that amendment, into consideration the power of the President under section 7 to advance to any railroad corporation for maturing obligations or for other legal and proper expenditures, or for reorganizing railroads in receiver-ships, any such sums as may be requested, have you not put back of these weaker roads the great financial power of the United States Treasury, in every instance in which the President may determine that it is just, and that in the public interest it should be put back of them, so that they are infinitely stronger than they have been in other years?

Mr. DEAN. Commissioner Anderson, to answer that, that amendment comes pretty near to what we want. I will meet it by a few sug-

gestions, and then you could not tell the difference between this and mine.

Senator CUMMINS. Although I do not quite agree with the suggestion of Mr. Anderson, the difference is that you take away the standard for all railroads, and I think that if you would prepare an amendment that would be applicable to the roads you really represent, namely, the short lines and the weaker lines, that we could understand it a great deal better. I agree that this compensation as provided here for these short lines may be in many instances very inadequate, and I think they will have to be put in a class by themselves, but your amendment proposes a change in the whole structure of the bill.

Mr. DEAN. Well, we were afraid, Senator, that if we came up with just that other line that you would think we were rather niggardly and were not taking any line into consideration except a short line, when there might be a long line. There might be a long line in exactly the same condition.

The CHAIRMAN. It is not a question of a long or short line; it is a question of the condition.

Senator KELLOGG. Is it not a fact that there are hundreds of these small roads all over the country which have been built because manufacturing and industrial concerns have been obliged, practically, to build their own outlet?

Mr. DEAN. There may be a few of them.

Senator KELLOGG. Or to acquire their own material?

Mr. DEAN. There may be a few of them.

Senator KELLOGG. And a good many roads are built to accommodate communities where the main-line roads, the big-line roads, would not build them, and the Government in taking over these roads is practically going to stop the entire enterprise of the country of building small-line roads for the accommodation of small communities.

Mr. DEAN. Yes, sir; if you pass this bill as it is every short-line railroad in the United States will hire one of these dollar-a-year men to kick him. If he knew his duty he would earn his dollar.

Senator GORE. The Government operation is going to stop all that enterprise?

Mr. DEAN. Yes, sir; absolutely. Most of these did not go to meet the enterprises, the enterprises came afterwards. The roads are constructed for the purpose of ultimately reaching some object. They may never attain it, but it is like a good many of our poets and lawyers and others that start out at the top to be President and don't ever come there. Most of these short lines that have proved failures have been absorbed and the big roads now own them, and you will find a vast number of these short lines owned by the big roads, without any disrespect to them. They buy up all the stock because the road fails, but they keep a corporate entity so that they can get an extra charge for any freight over its main line.

You will find a lot of these short lines owned by the trunk lines and a few independent lines that have not yet been absorbed. If this bill passes as it is, at the end of the three years some big line will own everyone of them, and then the man that builds another short line—I want to see him.

I want to read my section 2, Commissioner Anderson, and ask you if you will kindly criticize it: "That pending such agreement, ar-

bitration, or appeal the President may pay or cause to be paid to any carrier while under Federal control an amount not less than 90 per cent of such standard return, but in no event less than an amount equal to the accruing interest on its funded or other indebtedness."

The remainder of the bill should be retained. It goes on and says: " * * * remitting such carrier to its legal rights in the Court of Claims for any balance claimed, and any amount thereafter found due above the amount paid shall bear interest at the rate of 6 per cent per annum, and any excess amount paid hereunder shall be recoverable by the United States, with interest at the rate of 6 per cent per annum."

Commissioner ANDERSON. In the first part of that section, did you read "may" or "shall"?

Mr. DEAN. "Shall."

Commissioner ANDERSON. We shall never agree that there shall be a mandate issued by the President of the United States to that effect on a lot of very prosperous railroads.

Mr. DEAN. We are beggars, not choosers.

Senator POMERENE. Let us assume that the interest on the bonded indebtedness is \$500,000.

Mr. DEAN. Yes, sir.

Senator POMERENE. And that the road for several years had only been earning \$5,000 to apply on that \$500,000. Do you think the Government ought to pledge itself to pay the \$500,000?

Mr. DEAN. If it does not do it, it means a receivership for the road.

Senator POMERENE. It means that anyway, does it not?

Mr. DEAN. Not necessarily, because they can refund and reorganize. And here is what they will do now: If the carriers of that road see they could not do anything with it they would go to the Southern Railroad or to the L. & N. and say such and such is our condition, and we will sell you that road; we will cut our bonds in half and take 50 cents on the dollar, and we will take the other \$250,000 in stock and let you take and operate the railroad.

Senator POMERENE. But they have an option to do that; you are not giving the Government any option in that.

Mr. DEAN. Then put the word "may" in there. If we came in here with the word "may" you certainly would not substitute the word "shall."

Senator CUMMINS. I do not understand whether you asked Commissioner Anderson to "kindly criticize it" or to "criticize it kindly."

Mr. DEAN. What I meant was to criticize it kindly. I might have been inapt in the use of my words.

Commissioner ANDERSON. Perhaps, Mr. Chairman, I may shorten it if I added that we have no objection to putting in at the end of section 1 something to this effect: "*Provided, however, That any carrier which was not in operation or was in the hands of a receiver during any portion of the period of standard return, or in respect to which the President shall find that conditions are so exceptional that the basis above mentioned would not constitute just compensation, he is authorized to make with such carrier such agreement as he shall find just in that particular case.*" That is dangerously near cutting down your standard and leaving it as a pure matter of discretion. You might almost as well say that the President, having taken over certain railroads, is hereby authorized to trade with them.

but if the committee is prepared to grant a power as broad as that we do not object.

The CHAIRMAN. You propose that to go as a provision to section 1?

Commissioner ANDERSON. Yes; probably it would go there better. And then I will put into section 2, which I do think is a proper power, that authority to make advances to meet interest accruing in excess of the standard return wherever he thinks it is just. I think that is a proper power.

Senator CUMMINS. If that were limited to the roads whose net operating income was not enough to pay the interest upon the bonded debt there might be less objection to it, but if it is broad enough to cover any case, I think one may be entirely unwilling to give the President or anybody else any such unlimited authority.

Mr. DEAN. I think there is the 90 per cent which probably saves that, Senator: "That pending such agreement, arbitration, or appeal the President shall pay, or cause to be paid, to any carrier while under Federal control an amount not less than 90 per cent of such standard return, but in no event less than an amount equal to the accruing interest on its funded or other indebtedness."

Senator CUMMINS. Limiting that to the roads whose earnings have been less than the bonded interest, or not more, I would have no objection to that.

Mr. DEAN. That is the meaning of this, if I did not get it right before, that in no event less than that would mean that he could not go above that if the interest would pay the bonded indebtedness.

The CHAIRMAN. Will you read your proposed amendment to section 2 to meet this difficulty, the one that you read a moment ago?

Commissioner ANDERSON. Section 2, as I should be content with it, and would think probably in the light of what appeared yesterday, ought to be enacted, would read as follows:

That if no such agreement is made, the President may nevertheless pay or cause to be paid to any carrier while under Federal control an amount not exceeding 90 per cent of such standard return, remitting said carrier to its legal rights as provided in section 3 for any balance claimed: *Provided, however,* That the President may authorize the payment or advance of larger sums, if necessary, to meet interest accruing during Federal control on valid outstanding debt obligations incurred for property used for carrier purposes.

Any amount thereafter found due above the amount paid shall bear interest at the rate of 6 per cent per annum and any excess amount paid hereunder shall be recoverable by the United States with interest at the same rate.

I think that covers substantially every legitimate claim for financing pending settlement.

Senator CUMMINS. It drives all these shorter lines into the condemnation proceedings, and I think we ought to provide some way in which the President can fairly agree with these shorter lines and weaker lines on some basis other than that proposed for the big lines.

Commissioner ANDERSON. Senator, may I say a word on that? Section 3 is far more flexible than it has been construed here, and I made a redraft of section 3 this morning, putting down what to the mind of any experienced lawyer, I think, is fully implied in the older and shorter draft; and if you will permit me, I will read that—not that you would have overlooked it if you had read section 3 critically, as those of us who have had to draft it would have read it, but perhaps some of the things that have been said here have left their impress on your minds.

All claims for just compensation not adjusted as provided in section 1 shall on the application of the President or any carrier be submitted to boards consisting of three referees to be appointed by the Interstate Commerce Commission, members of which and the official force thereof being eligible for service on such boards without additional compensation, such boards of referees are hereby authorized to summon witnesses, require the production of papers, view properties, administer oaths, and may hold hearings in Washington and elsewhere, as their duties and the convenience of the parties may require. Such cases may be heard separately or together, or by classes, as the Interstate Commerce Commission or any board of referees to which any such case or cases may be referred may determine. Such boards of referees shall give full hearings to said carriers and to the United States, and shall report as soon as practicable in each case to the President, the amount of return due or accruing to such carrier as just compensation, a sum not exceeding such amount of return so reported may be agreed upon by the President and such carrier as the ascertained return. Failing such agreement, either the United States or such carrier may file a statement in the Court of Claims—

and so on.

Now, it is perfectly clear that no executive officer can deal with the rights of these various small lines not standardized by returns which authorize or make just the application of the rule of section 1, but has got to have a report from somebody before he is authorized to make any trade. You might consider having an ex parte report without giving the other side a chance to be heard and then authorizing the President to trade on the basis of the ex parte report; you would almost certainly duplicate work if you did that. It has seemed to us that the fairest thing was to provide that there should be appointed in the first instance boards of referees, presumably men in or connected with the Interstate Commerce Commission, but leaving the carriers, if they object to us or to our forces, to ask for the appointment of circuit court judges, outside lawyers, engineers, accountants, or anybody, and authorize them to use our records, administer oaths, proceed with all judicial decorum and formality, if necessary, but as soon as practicable to make a report in each case. Some cases will fall into classes; you may hear them by classes and take out one, if you have reasonable and agreeing counsel, and they will probably agree on most of the salient facts and agree that the decision of that case will fairly typify a lot of cases. You may agree to try out one case elsewhere, and on that report as a preliminary you will settle all the rest. Those reports will come in, and you could have these going on in classes all at the same time, and the President, through the Director General, may make a settlement with every one of them. You remit to the court no cases in which the parties are not in violent disagreement with the results reached by these boards of referees.

I have been over that situation with a good deal of care and with some very competent men. I am not expressing merely an individual judgment on that, but I defy anybody in the light of the facts to work out a piece of machinery applicable to this situation which is less likely to leave a mass of litigation and less controversial opinion than this.

Senator CUMMINS. Commissioner Anderson, I have never had any objection to section 3. I think it provides for the speediest possible methods of ascertaining in a legal way just compensation for all these roads, and I do not see any difference—essential difference—between the section as you have just read it and the section as it is printed.

Commissioner ANDERSON. None.

Senator CUMMINS. As I understood that section.

The CHAIRMAN. Mr. Dean, I would like to have your attention directed to the proposed amendment in section 2 and the modification or explanation given of section 3 by Mr. Anderson. I ask you why that would not meet your wishes in this case without jeopardizing section 1 by broadening the scope that we wish to restrict certain roads to.

Mr. DEAN. Just on that, Mr. Chairman, it is just a little too restricted. We do not think it is quite broad enough to give the President discretion, and I think that Commissioner Anderson's amendment pretty well reaches that.

As to section 2, I want to make one remark, and it is addressed to Commissioner Anderson just as well as to the committee, but I think that Commissioner Anderson wants to do the fair thing, from what I see here. The proposition that he is advancing now does not touch the road that owes anything or owes on its preferred stock. Take the Gainesville & Northwestern, the only road in Georgia which is not a bonded road. But should you take it for nothing because it has not yet hauled its first ton of ore over its line, that it built its road for and expected to make its profit out of? Is not that a technical circumstance that entitles it to some compensation? It has been putting its additional money and its earnings into the road all the time, and the owners are taking common stock and preferred stock for it.

Commissioner ANDERSON. Mr. Dean, it can be financed under section 7, if the President thinks it ought to be, and it can be tried out under section 3 within 10 days—all its rights to compensation. What more right could it have?

Mr. DEAN. Pending that time it might go to the court of appeals, and it might take a longer time than 10 days. Suppose the President says, "Here, we do not want to have any litigation, we see you are right and we are willing to pay you, say, 6 per cent on the stock, pending this litigation, pending this adjustment we will pay you that." These men are fairly liberal men, and I think they will say, if you will treat our preferred stock just like \$250,000 worth of bonds, we will be contented. If you say not, then those bonds would be put into the hands of a receiver and that stock may be up as collateral in some bank. If that bank finds out that some of your assets have been depreciated by litigation or by legislation or by something else, and you say that you want your usual \$20,000 or \$10,000 credit in the bank, they will say that you have to put up some collateral here. Heretofore your name was good, but as soon as you lose your assets the bank finds it out as quick as you do, and you can not get collateral; the owner of that stock should have some provision and should not be crippled. You should not take his road for nothing.

We come to paragraph 3, and Commissioner Anderson used one expression which, he will pardon me, but I want to refer to. He said it would be perfectly fair and would appear so to experienced lawyers. Well, I have had some experience, and I found out that arbitration is simply in the same category as playing poker. If you have not got the joker it is out, the other fellow has it.

The CHAIRMAN. Can you not use some other illustration?

Mr. DEAN. We ought to have a fair arbitration, and a fair arbitration brings about settlement a great deal quicker than unfair arbitration. The very fact that one side has the right to appoint all three men itself stamps it with the fact that there is a fear on the part of the Interstate Commerce Commission to give the railroads the right to choose one man. I will say this: He said about the appointment of a circuit judge. As far as Georgia is concerned, if you put Beverley D. Evans there, as the last man, or the President puts him there, we will take it as a finality for every road in Georgia.

Senator CUMMINS. Mr. Dean, section 8 does not provide for any arbitration. It is not an arbitration, it is a condemnation court.

Mr. DEAN. Call it that, if you want to. Then the usual rule for condemnation is for the condemning party to choose one, the owner of the land to choose another, and those two choose a third, and if they can not agree, some other impartial body to appoint a third. Here is our amendment on that.

Senator CUMMINS. I never heard of a condemnation tribunal organized in that way. They usually resort to Government tribunals appointed by the Government, and in the way provided by the law.

Mr. DEAN. Well, that is the way we try them in Georgia.

Here is our section 3:

That any claim for just compensation not adjusted as provided in section 1 shall be first submitted to a board of three referees, one to be appointed by the Interstate Commerce Commission, one to be selected by a majority of the carriers desiring arbitration, and the third by these two, or, in case of disagreement, by the President.

That gives you the two. Then it follows:

Said referees shall give a full hearing to each carrier coming before it, and to the United States, and shall report to the President the amount due such carrier as just compensation; a sum not exceeding the amount so reported may be agreed upon by the President and such carrier or carriers. Either side being dissatisfied may appeal from such award to the Court of Claims, where such claim shall be tried and decided in accordance with the rules and procedure of said court for the purpose of final ascertainment of the amount of such just compensation and in the proceedings of said court reports of said referees, if unanimous, shall be prima facie evidence of the facts therein stated.

This, gentlemen, has one word in there that I do not know that you gather: "That any claim for just compensation not adjusted as provided in section 1 shall be first submitted to a board of three referees, * * *." That keeps down all litigation in the Court of Claims and prevents the 800 lawsuits being brought in the Court of Claims. It provides usually, first, that it has to go to a condemnation court, and if you can not reach an adjustment, then it goes up to the Court of Claims for review. That is perfectly fair. I feel that the Interstate Commerce Commission will appoint the best man they have on their board.

We will certainly select the best man that we can find. If you want one man for the whole United States, all right; or one man for each State, all right; or one man for each circuit, all right. If they can not agree on the man, we will name the biggest man in the United States, if we can find him, and then if we can not agree on that, the President has a right to step in and appoint the third man. Then, you are not going to put anything over on anybody on that sort of a proposition. I do not know if you would appoint three men.

We are not strangers to condemnation proceedings down in Georgia. We have the Appalachian district there. This Appalachian reserve extends down to our doors, and the Government sends down there and condemns these lands and takes them. But I tell you they do not know the difference between a piece of land that a jack rabbit can jump over and the land that makes splendid corn or cotton land. All the land looks alike to them. They do not know the difference between black jack and splendid wheat land. They just go down there, and they say, "Now, here, you, if you don't take \$6 an acre, we will condemn this land." Then, when they condemn it they send out a man who looks over it and he reports it at \$6 an acre. And it is surprising, of all the lands in the county that I know of, of which the values range from \$1 to \$100, they all are taken at \$6.50 an acre. I never saw such a fair value in my life.

The CHAIRMAN. Do you think there is any such danger from the Government in this case? Is that the basis of your fear?

Mr. DEAN. I do not know. I do not know who they will appoint; I do not know the basis they will put it on. If they say the fair earnings are so and so, and you find a road that just made a dollar last year—if they go out on that idea, I do not know where we would land. I don't know whether they would take into consideration the value of the terminals or the value of the future of the road.

We feel this, Mr. Chairman: I do not know whether this is permanent or not; I do not suppose you do. This bill certainly does not look as if it had for its object a permanent taking. But when you fixed the value of that railroad and you pass later a bill to condemn that railroad, the very first thing that the Interstate Commerce Commission will say, and the very first thing that the President of the United States will say is, "You multiply that road on a 6 per cent per annum basis and you have got the value of that road, and we will take it over and pay you for it." It is just fixing the standard for future appropriation of the road if they decide later to appropriate it.

I want to thank you, gentlemen, for the kindness that you extended to me. I have taken more time than I really intended to, but there have been a good many interruptions.

I just want to say one other thing, if the committee will hear me. This bill, it may be, ought to be broadened, and I would suggest this amendment: That you put this definition to this bill—that the words "certain systems of transportation called herein carriers, as used in this bill shall be construed to cover all railroads, terminals, and common carriers engaged in whole or in part in interstate commerce."

Senator TOWNSEND. And not cover intrastate at all?

Mr. DEAN. Well, when we come down to that, I do not know of a road anywhere that is not engaged in part in interstate commerce. It carries express or mail or carries a through ticket or through freight, it is interstate.

Senator TOWNSEND. Suppose it carried other things than those?

Mr. DEAN. I am perfectly willing that it should be covered.

Senator CUMMINS. You would have to take that back farther, to the act of 1916. What you mean is that we shall modify or interpret the act of 1916 in that way, that being the act under which the President has taken over these roads?

Mr. DEAN. Yes, sir; and you might broaden this act itself and give us an idea of what the roads are that you are talking about. I submit that for your consideration.

Senator POMERENE. The effect of that language that you have just suggested, to require the Government to take over all roads—is that the effect of it?

Mr. DEAN. No, sir; you see, this is only for the purpose of defining that meaning. Our position is that the President has already taken them over; he has notified all the railroad commissions of the various States to seize every railroad, and they are in the hands of the Government. I do not know, I have not read it with that view, as to whether the Government could issue a second proclamation eliminating certain roads. We are not discussing that now. But it seems to me this bill ought to define what roads they are.

The CHAIRMAN. Under the act of August, 1916, he could have issued a proclamation just taking a part?

Mr. DEAN. I think so.

The CHAIRMAN. And eliminate the others and not take them at all?

Mr. DEAN. I think so; yes, sir.

The CHAIRMAN. It is so stated in that provision.

Senator CUMMINS. The only question of doubt is whether he can take them all.

Senator POMERENE. I do not think you understand my question. Whether it is the purpose of the Government to take all the roads in the United States, if they take any.

Mr. DEAN. Yes, sir.

Senator POMERENE. Is that the language of that clause?

Mr. DEAN. Yes.

Commissioner ANDERSON. Will you give me copies of your first amendments?

Mr. DEAN. Yes, sir; I will do that.

Mr. ROBINSON. Mr. Chairman, we will present to you two or three additional concrete cases, showing where they vary in particular phases. I want to introduce Mr. Anderson, of the Oneida & Western Road, which is being built now, and let him make a short statement as to how it affects his interest.

Senator GORE. I would like to have any road that does not have a witness appear here in its behalf to file a brief stating the facts of each particular road.

The CHAIRMAN. There is no objection to that. Those roads that desire to file a brief should do so.

Mr. THOM. Mr. Chairman, before this gentleman begins, I would like to file with the committee a telegram which I have received from the Western Association of Short-Line Railways, by C. L. Oddie, secretary. I wish to explain that I have no professional or official relation with any of these short-line associations, but Mr. Oddie, knowing my relations with the railroads generally, has sent me this telegram, in which he asks whether I would advise the Western Short-Line Railways Association to appear here as witnesses and ask a hearing. I telegraphed him that the other short-line representatives were making a statement, and that I thought that instead of their sending witnesses from San Francisco here, perhaps it might be appropriate to simply file his telegram to me.

which I have done, as I say, merely in a personal way; and if the committee will allow me I will read that telegram at this juncture and will file it with the record.

The CHAIRMAN. You may read it.

Mr. THOM (reading):

SAN FRANCISCO, CAL., January 12, 1918.

A. P. THOM,

*Chairman Railway Executive Advisory Committee,
1300 Pennsylvania Avenue NW., Washington, D. C.*

Members Western Association Short-Line Railroads, comprising 55 common-carrier railroads in 11 Western States, in a few instances will be favorably affected by Government using three-year period ending June 30, 1917, on which to base compensation; in other cases this works extreme hardship, as these roads, account high operating costs, car shortage, and other factors, have not participated in general business expansion of country since 1914. We consider any arbitrary bases of compensation unjust and unfair, and that provision of bill compelling railroads dissatisfied with same to go before Court of Claims and thereafter secure act of Congress before receiving just compensation, to be too heavy a burden for small properties to bear. These railroads desire in every possible way to assist Government in prosecution of war and to put no obstacles in way, but believe Congress will not knowingly deprive them of just compensation. We desire your opinion and advice as to whether we should ask for hearing before Senate Committee on Interstate Commerce, or what action is best to take. Please advise fully by wire.

WESTERN ASSOCIATED SHORT-LINE RAILWAYS,
By C. L. ODDIE, *Secretary*.

**STATEMENT OF O. H. ANDERSON, PRESIDENT AND GENERAL
MANAGER OF THE ONEIDA & WESTERN RAILROAD.**

The CHAIRMAN. Mr. Anderson, give your name and address and official position. The subject matter under discussion is the relation of the short-line roads, and we would like to have you put it in as condensed a form as you can consistent with clearness.

Mr. ANDERSON. My name is O. H. Anderson and my residence is Chattanooga, Tenn.

I am the president and general manager of the Oneida & Western Railroad, a line projected to build 60 miles northwest of Oneida, Tenn., 22 miles of which is completed and 3 miles being under construction. That finished the first contract, covering 25 miles. We began the construction of the Oneida & Western Railroad in January, 1914. Heretofore they had no earnings for the three-year period ending June 30, 1917.

Senator GORE. You say they had no earnings?

Mr. ANDERSON. No earnings or practically no earnings, except the earnings incident to the construction. We are developing a territory that is virgin so far as timber and coal is concerned, and there is now situated on our road about 15 sawmills. One of our patrons has sold to the subcontractor or to the contractor, who is working for the Government, a large amount of timber, and that is about the only business we have been doing since these embargoes and these priority orders were issued.

Under the present status of this bill, as a matter of course, we would have no standing; we would receive no compensation at all. The coal mines are being developed and the business of the road is developing along the lines indicated, and we desire, of course, that the bill be

made elastic enough to take care of railroads in our situation. We received from the Director General notice that we were taken over, otherwise I would not be here.

Senator UNDERWOOD. Would you be satisfied if you were let out to go ahead and mind your own business, to suit yourself?

Mr. ANDERSON. Well, I would not give 10 cents on the dollar for the bonds or stock of the short-line railroad that is left out provided the Government takes the long lines. I think it would result in bankruptcy for all of them and result in speculation on the part of the larger lines, because of the fact that they would be compelled to go into bankruptcy and could not get cars, would not be able to get the service that they would otherwise get. Of course, they might be worth more than 10 cents on the dollar for junk.

Senator KELLOGG. Not much.

Mr. ANDERSON. No; not much.

The CHAIRMAN. Mr. Anderson, you have studied this bill and the provisions of it and have heard the proposed amendments by Commissioner Anderson?

Mr. ANDERSON. I am satisfied with Commissioner Anderson's proposed amendments. I think it would cover our case all right, and, of course, all others in the same condition. But I think that if the short lines are left out, or any considerable number of them are left out, it will stifle the development of the country. All railroads in this country were at one time short lines, and it is the linking up of the short lines that has built up the trunk lines; and I hardly think it is the intention of the Government to stop the development of the country. But I am quite certain that I have spent my last dollar in railroads if I am left out.

The CHAIRMAN. You, then, are satisfied that if the amendment proposed in section 2, the modification of section 3, and the provisions of section 7 as proposed by Commissioner Anderson are carried out, you would be satisfied?

Mr. ANDERSON. I felt that that would take care of us, but I only speak for my particular railroad and those in the same class.

Senator GORE. Mr. Anderson, you say your road is projected into virgin territory and it hauls out of that community freight originating there and is the only one that supplies freight from other parts of the country into that section. About the only danger you would be exposed to would be the taking over of your rolling stock and the using of it in other parts of the country; is not that true?

Mr. ANDERSON. Yes, sir; we depend on the trunk lines for rolling stock. Practically all of the short lines are in that condition.

Senator GORE. You have not provided yourself with rolling stock?

Mr. ANDERSON. No; we own two locomotives now, in condition, and about 25 cars.

Senator GORE. You say that is the situation generally?

Mr. ANDERSON. That is the way I understand it; yes, sir. Of course, I am of the opinion that all of the short-line railroads were taken in or it was contemplated at the time; but from the development before these committees, it may be particularly advisable to leave some of them out, and it may be necessary.

Senator KELLOGG. Why is it necessary to leave any of them out?

Mr. ANDERSON. Well, to avoid the financial burden that would fall on the Government was about the only reason I could see for it. I do not think it is right to leave them out. I think it would be the most unjust thing that could happen.

Senator KELLOGG. It would have been better not to take over any of them, would it not?

Mr. ANDERSON. Better not to take over any of them.

Senator KELLOGG. I think there is no doubt about that.

Senator UNDERWOOD. There may be cases where the Government does not want a road, and the owners of the road do not want the Government to take it. There is no reason in a case of that kind why they should be forced into the Government's hands by Congress.

Senator POMERENE. Your freight, I take it, from what you say, is principally lumber and coal?

Mr. ANDERSON. Yes, sir.

Senator POMERENE. What do you anticipate, that there will not be a great demand for that lumber and coal?

Mr. ANDERSON. There is a great demand for it now.

Senator POMERENE. And why will there not be during the coming years if this war continues?

Mr. ANDERSON. There will be during the war, but if this bill should become a criterion for Government ownership, or as a basis on which to figure the value of the railroads, and the short lines are left out and go into bankruptcy, into the hands of receivers, the present investors in those securities will lose every dollar that they put in.

Senator POMERENE. Yes; if all those things happen, that is probably true.

Mr. ANDERSON. Yes, sir.

The CHAIRMAN. Is this not also true, Mr. Anderson, that under this order there may be some roads, or parts of roads, clearly within the definition of the word "system," that the Government might not see fit to use at all?

Mr. ANDERSON. Yes, sir.

The CHAIRMAN. But it has provided for compensation for that road, whether it uses that particular piece of track at all or not, whereas if you are included you are not in that category, and if you are not used at all you would have no remuneration.

Mr. ANDERSON. That is the situation exactly.

Senator CUMMINS. Mr. Anderson, you say you are satisfied with the proposal or amendment made by Mr. Commissioner Anderson. You understand that under the amendments that he has suggested this morning the President would have no authority to agree with your road until the referee had ascertained the value of the use of the property? You understand that?

Mr. ANDERSON. Yes, sir; I understand it.

Senator CUMMINS. So you would not expect any agreement for compensation to be made until after these proceedings had taken place and the value of the use of your property ascertained?

Mr. ANDERSON. I understand, and I want to state this, that a delay in the ascertaining of the value of the use may result in bankruptcy to a lot of railroads, and that ought not be delayed.

Senator CUMMINS. Of course, it ought not to be delayed further or longer than is necessary, but you said you were satisfied with it, and I wanted to be sure that you understood just where it would put your

road. Now, eliminating section 2 for a moment from our consideration, for that is simply an advance, what you want, if possible, is an agreement with the Government that will determine your compensation so long as the Government has possession of the road, in order to stabilize and fortify your securities?

Mr. ANDERSON. That is exactly right.

Senator CUMMINS. You understand that that agreement could not be made under the arrangement suggested until the referees who are to be appointed, or the tribunal to be appointed under section 3 had gone through the evidence submitted as to the value of your property and the value of its use, and made a report, and then if you are satisfied with that report, and the President is satisfied with it, he could then enter into an agreement with you for the payment of that amount during Government possession.

Mr. ANDERSON. Yes, sir; but I would not want that report to be delayed.

Senator CUMMINS. No human being can tell how long it will be delayed.

Mr. ANDERSON. Well, that is just what I say. If it is delayed it will result in bankruptcy for a lot of railroads.

Senator CUMMINS. Therefore it would seem to me that you would be better satisfied, or your interests better taken care of, if section 1 were amended in some fashion that would give the President authority prior to these proceedings before the referees to give you just compensation.

Mr. THOM. May I say one word before the committee adjourns from the standpoint of the railroads I represent? This matter which Senator Cummins has just mentioned is considered of extreme importance, that there shall be such a discretion lodged in the President as to insure, as far as we can, as many agreements as possible and as few references of these cases to this board of arbitration, and I shall try to bring to the attention of Commissioner Anderson an amendment which we favor on that subject, and I hope that we will be able to enlarge section 1 so as to give the discretion, and large discretion, to the President in that matter.

The CHAIRMAN. The committee stands recessed until 2 o'clock p. m.

AFTER RECESS.

The hearing was resumed at 2 o'clock p. m. pursuant to the taking of the noon recess.

The CHAIRMAN. The committee will come to order.

Senator ROBINSON. Mr. Chairman, I move that the committee adjourn until 10 o'clock to-morrow morning out of respect to the memory of Senator Brady.

The CHAIRMAN. The committee will stand adjourned until to-morrow morning at 10 o'clock when the status of the witnesses will be the same as now.

(Whereupon, at 2.05 o'clock p. m. the committee adjourned until to-morrow, Thursday, January 17, 1918, at 10 o'clock.)

SAN FRANCISCO, CAL., January 12, 1918.

A. P. THOM,

*Chairman Railway Executive Advisory Committee,**130 Pennsylvania Avenue NW., Washington, D. C.*

Members Western Association Short-Line Railroads, comprising 55 common-carrier railroads in 11 western States in a few instances will be favorably affected by Government using three years period, ending June 30, 1917, on which to base compensation. In other cases this works extreme hardship as these roads on account high operating costs, car shortage, and other factors have not participated in general business expansion of country since 1914. We consider any arbitrary bases of compensation unjust and unfair and that provision of bill compelling railroads dissatisfied with same to be before Court of Claims and thereafter and secure act of Congress before receiving just compensation to be too heavy a burden for small properties to bear. These railroads desire in every possible way to assist Government in prosecution of war and to put no obstacles in way, but believe Congress will not knowingly deprive them of just compensation. We desire your opinion and advice as to whether we should ask for hearing before Senate Committee Interstate Commerce or what action is best to take. Please advise fully by wire.

WESTERN ASSOCIATION SHORT-LINE RAILWAYS,
By C. L. ADDIE, *Secretary.*

OFFICE OF THE DIRECTOR GENERAL OF RAILROADS,
Washington, D. C., December 29, 1917.

General Order No. 2.

To the chief executives of the railroads:

Pursuant to the authority vested in me by the President of the United States in his proclamation of December 26, 1917, wherein it was stated that for purposes of accounting possession and control of the railroads shall date from 12 o'clock midnight on December 31, 1917, you are notified that until otherwise directed no changes in the present methods of accounting as prescribed by the Interstate Commerce Commission will be required. The accounts of your respective companies shall be closed as of December 31, 1917, and opened as of January 1, 1918, in the same manner as they have heretofore been handled at the close of one fiscal period and the beginning of another, and in the same manner that you should have handled your accounts had the Government not taken possession and control.

WILLIAM G. MCADOO,
Director General of Railroads,

ORDER.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 5th day of January, A. D. 1918.

In the matter of railway operating and financial returns for the year ending June 30, 1917.

It is ordered, That all common carriers by steam railroad subject to the provisions of the act to regulate commerce, as amended, and the owners of all railroads engaged in interstate commerce as therein defined, be, and they are hereby, severally required to submit to the Interstate Commerce Commission the statements specified hereunder, prepared by primary and general accounts or other indicated detail for the designated year only, in accordance with the itemization and forms of statements of like character included in the forms respectively prescribed for the annual reports of steam railway companies to the said commission for the year ending June 30, 1916, suitably modified as to dates:

- (1) A statement of operating revenues for the year ending June 30, 1917.
- (2) A statement of operating expenses for the year ending June 30, 1917.
- (3) A statement of income account for the year ending June 30, 1917.
- (4) A statement of profit and loss account for the year ending June 30, 1917.
- (5) A statement of general balance sheet as of June 30, 1917.

612 GOVERNMENT CONTROL AND OPERATION OF RAILROADS.

- (6) A statement of the following items of railway mileage (single track):
- (a) Number of miles of road owned on June 30, 1917.
 - (b) Number of miles of road operated on June 30, 1917.
 - (c) Average number of miles of road operated during year ending June 30, 1917.

It is further ordered, That if the entries appearing upon the books of a respondent do not fully show the transactions for the period of the report herein required, appropriate explanation shall be made in said report.

It is further ordered, That the aforesaid report shall be mailed in duplicate to the Bureau of Statistics, Interstate Commerce Commission, Washington, D. C., by January 25, 1918, and shall be attested under oath after the following form:

OATH.

State of _____ }
County of _____ } ss:

_____ makes oath and says that he is _____ of _____, and that he has carefully examined the annexed report, and to the best of his knowledge and belief the entries contained in the said report have, so far as they relate to matters of account, been accurately taken from the said books of accounts and are in exact accordance therewith; that he believes that all other statements of fact contained in the said report are true, and that the said report is a correct and complete statement of the business and affairs of the above-named respondent in relation to the matters and things therein set forth.

Subscribed and sworn to before me, a _____ in and for the State and county above named, this _____ day of _____, 1918.

My commission expires _____.

By the Commission:

[SEAL.]

GEORGE B. MCGINTY, *Secretary.*

ORDER.

At a general session of the Interstate Commerce Commission held at its office in Washington, D. C., on the 5th day of January, A. D. 1918.

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Subscribed and sworn to before me, a _____, in and for the State and county above named, this _____ day of _____, 1918.

My commission expires _____.

By the commission:

[SEAL.]

GEORGE B. MCGINTY, *Secretary*.

OFFICE OF THE DIRECTOR GENERAL OF RAILROADS,
 Washington, December 28, 1917.

To the presidents and directors of all railroad companies:

Having assumed the duties imposed upon me by, and in pursuance of, the proclamation of the President dated December 26, 1917, you will, until otherwise ordered, continue the operation of your road in conformity with said proclamation. You are requested to make every possible effort to increase efficiency and to move traffic by the most convenient and expeditious routes.

I confidently count on your hearty cooperation. It is only through united effort, unselfish service, and effective work that this war can be won and America's future be secured.

W. G. MCADOO,
Director General of Railroads.

INTERSTATE COMMERCE COMMISSION,
 Washington, D. C., January 4, 1918.

NOTICE.

The commission directs that fifteenth section, application No. 2246, submitted by Mr. G. K. Caldwell as chairman of the committee constituted by rail carriers serving the territory south of the Ohio and Potomac Rivers and east of the Mississippi River and by coastwise steamship connections of such rail carriers be and it is hereby assigned for hearing February 11, 1918, before Examiner Gibson, at Tampa, Fla., in conjunction with the pending investigation proceeding in Docket No. 9516—Southeastern rate adjustment, and said application is hereby consolidated with that investigation.

Said application seeks approval to file revised rates from the Ohio and Mississippi River crossings and related points, eastern cities, interior eastern points, and from Buffalo-Pittsburgh territory to points in Southeastern and Mississippi Valley territory on the following named commodities: Asphaltum dip; brick; celery, except from South Atlantic ports; cotton-seed oil; cotton-seed foots and tank bottoms; cotton yarn; cotton yarn warp; ferromanganese; ferrosilicon and spiegel iron; furniture and furniture material; iron and steel articles, l. c. l.; naval stores; ore, chrome ore or clay, magnesite; ore, manganese; ore; oil, soya bean and peanut; paper and related commodities; peaches, pears and plums, except from South Atlantic ports; petroleum and petroleum products; plumbers' material; stone, marble and granite; white stone; woodenware; also miscellaneous rates on classes and various other commodities.

The petitioner states that the proposed revision is a part of the general revision required by the commission's fourth section order No. 3866, and orders supplementary thereto, entered in fourth section violations in the southeast, 30 I. C. C. 153. It is declared that the plans are to be pursued and the same principle to be observed as in the revisions previously made as responsive to said order and which became effective January 1, 1916, and later dates.

GEORGE B. MCGINTY, *Secretary*.

DIRECTOR GENERAL OF RAILROADS,
Washington, December 29, 1917.

ORDER NO. 1.

Pursuant to the order of the President of the United States, through the Secretary of War, the undersigned, as Director General of Railroads, has taken possession and assumed control of certain transportation systems described in the proclamation of the President, of which proclamation and order officers, agents, and employees of said transportation systems are to take immediate and careful notice. In addition to the provisions therein contained, it is, until further order, directed that—

1. All officers, agents, and employees of such transportation systems may continue in the performance of their present regular duties, reporting to the same officers as heretofore, and on the same terms of employment.

2. Any officer, agent, or employee desiring to retire from his employment shall give the usual and seasonable notice to the proper officer, to the end that there may be no interruption or impairment of the transportation service required for the successful conduct of the war and the needs of general commerce.

3. All transportation systems covered by said proclamation and order shall be operated as a national system of transportation, the common and national needs being in all instances held paramount to any actual or supposed corporate advantage. All terminals, ports, locomotives, rolling stock, and other transportation facilities are to be fully utilized to carry out this purpose without regard to ownership.

4. The designation of routes by shippers is to be disregarded when speed and efficiency of transportation service may thus be promoted.

5. Traffic agreements between carriers must not be permitted to interfere with expeditious movements.

6. Through routes which have not heretofore been established because of short hauling or other causes are to be established and used whenever expedition and efficiency of traffic will thereby be promoted; and if difficulty is experienced in such through routing, notice thereof shall by carriers or shippers, or both, be given at once to the Director by wire.

7. Existing schedules of rates and outstanding orders of the Interstate Commerce Commission are to be observed, but any such schedules of rates or orders as may hereafter be found to conflict with the purpose of said proclamation or with this order shall be brought immediately, by wire, to the attention of the Director.

W. G. McADOO,
Director General of Railroads.

ORDER NO. 3.

All carriers by railroad, subject to the jurisdiction of the undersigned, are hereby ordered and directed forthwith to publish and file, and to continue in effect until further order tariffs effective January 21, 1918, wherein demurrage rules, regulations, and charges shall be changed so as to provide:

A. (1) Forty-eight hours (two days) free time for loading or unloading on all commodities.

(2) Twenty-four hours (one day) free time on cars held for any other purpose permitted by tariff.

B. Demurrage charges per car per day or fraction of a day until car is released, as follows: Three dollars for the first day, \$4 for the second day, and for each succeeding additional day the charge to be increased \$1 in excess of that for the preceding day until a maximum charge of \$10 per car per day shall be reached on the eighth day of detention beyond free time, the charge thereafter to be \$10 per car per day or fraction thereof. These charges will supersede all those named in existing tariffs applicable to domestic freight, and specifically contemplate the cancellation of all average agreement provisions of existing tariffs.

No change is authorized hereby to be made in demurrage rules, regulations, and charges applying on foreign export freight awaiting ships at export points.

Upon my request the Interstate Commerce Commission has issued fifteenth section order No. 225, authorizing the filing of tariffs to accord with this order to become effective January 21, 1918, on one day's notice.

Carriers shall immediately file said tariffs with appropriate State commissions or other State authorities.

Dated at Washington, this 5th day of January, 1918.

W. G. McAdoo,
Director General of Railroads.

DIRECTOR GENERAL OF RAILROADS,
INTERSTATE COMMERCE COMMISSION BUILDING,
Washington, January 8, 1918.

To all railroad officers and employees:

The Government of the United States having assumed possession and control of the railroads for the period of the present war with Germany, it becomes more than ever obligatory upon every officer and employee of the railroads to apply himself with unreserved energy and unquestioned loyalty to his work.

The supreme interests of the Nation have compelled the drafting of a great army of our best young men and sending them to the bloody fields of France to fight for the lives and liberties of those who stay at home. The sacrifices we are exacting of these noble American boys call to us who stay at home with an irresistible appeal to support them with our most unselfish labor and effort in the work we must do at home if our armies are to save America from the serious dangers that confront her. Upon the railroads rests a grave responsibility for the success of the war. The railroads can not be efficiently operated without the whole-hearted and loyal support of every one in the service, from the highest to the lowest.

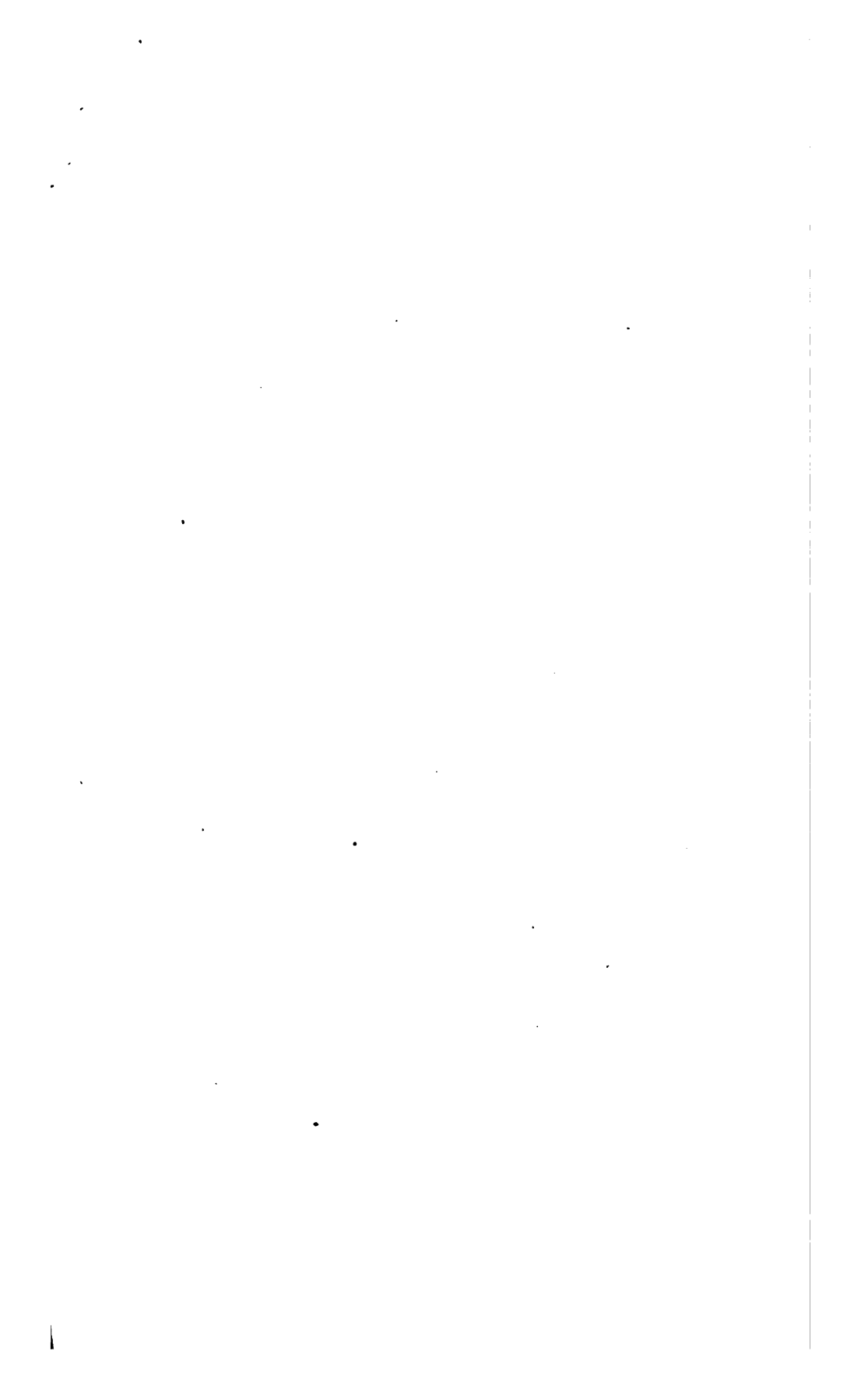
I earnestly appeal to you to apply yourselves with new devotion and energy to your work, to keep trains moving on schedule time and to meet the demands upon the transportation lines, so that our soldiers and sailors may want for nothing which will enable them to fight the enemy to a standstill and win a glorious victory for united America.

Every railroad officer and employee is now, in effect, in the service of the United States, and every officer and employee is just as important a factor in winning the war as the men in uniform who are fighting in the trenches.

I am giving careful consideration to the problems of railroad employees, and every effort will be made to deal with these problems justly and fairly and at the earliest possible moment. There should be a new incentive to everyone in railroad service while under Government direction to acquit himself with honor and credit to himself and to the country.

W. G. McAdoo,
Director General of Railroads.

N. B.—The Director General of Railroads requests that the above statement be posted by all railroads.



GOVERNMENT CONTROL AND OPERATION OF RAILROADS.

THURSDAY, JANUARY 17, 1918.

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE COMMERCE,
Washington, D. C.

The committee met, pursuant to adjournment, in room 410, Senate Office Building, Senator Ellison D. Smith, presiding.

The CHAIRMAN. The committee will come to order.

Mr. Robinson, have you any other witness that you desire heard in behalf of the short line roads?

Mr. BIRD M. ROBINSON: Yes, sir; we have four who are anxious to be heard, and I think they will be short. I think the statements of the witnesses will be short. It depends thereafter upon the information desired by the members of the committee as to how much longer they will remain upon the stand.

The CHAIRMAN. You understand the situation. What the committee is desiring to get, as near as may be in its condensed form, is the situation of the short roads in reference to this particular bill, and of course we would like to have them address themselves to the matters that really would affect them as a class. We can not go into all of the minute details and the particular conditions of any one road.

Mr. ROBINSON. That is true; only I assume the committee might want to go into the details of the road if it was indicative of a class.

The CHAIRMAN. Yes, that is what I mean.

Mr. ROBINSON. And therefore would have a direct bearing on the bill.

The CHAIRMAN. Yes.

Mr. ROBINSON. With the permission of the committee we will present Mr. H. P. Edwards, of the Atlantic & Western Railroad, of North Carolina.

STATEMENT OF MR. H. P. EDWARDS, GENERAL MANAGER OF THE ATLANTIC & WESTERN RAILROAD.

The CHAIRMAN. Mr. Edwards, will you give your name, your address, and also your official connection?

Mr. EDWARDS. H. P. Edwards, Sanford, N. C., general manager of the Atlantic & Western Railroad.

As I see it, there are only two points that I want to bring out, and I will do it very briefly. That is the matter of compensation, and as to the effect upon the small roads if they are left to private control. My line is 25 miles long and we have under construction 110 miles. This 25 miles has been in operation for 14 years, and up to the last fiscal year we have earned the interest on our funded debt, with a small surplus; but the last fiscal year it has been a very hard one with

us on account of the scarcity of the cars, brought about by congestion on the large lines, and also on account of the many embargoes they have issued. These have had a very bad effect upon the small lines, and upon the earnings for 1917, the fiscal year. The earnings have been very low. As that year has been one of the bases used in arriving at the standard return, it will make our net earning so low that we can not pay the interest on our funded debt and we will therefore be obliged to go into the hands of a receiver unless some adequate compensation is allowed. But I feel that under the amendment suggested by Commissioner Anderson yesterday machinery will be provided to take care of that if it is made so that it will operate quickly. It has been my observation that courts of all kinds are very slow to reach final results, and a drowning man has got to operate quickly, especially after he has already gone down twice.

That is one point that I wanted to impress upon him, to make this machinery operate quickly, so as to give relief as quickly as possible.

The CHAIRMAN. Have you a table with you that would show the condition of your road for the 14 years that it has been in operation?

Mr. EDWARDS. I have not got it with me. I unfortunately lost all my papers in coming up here. One piece of my baggage was lost and I was unable to find it.

The CHAIRMAN. You might have a duplicate made.

Mr. EDWARDS. Yes; I could.

The CHAIRMAN. You could have those figures for the committee, could you not?

Mr. EDWARDS. Yes; I could file it.

The CHAIRMAN. If it has been running 14 years it would be helpful if you would put it in the form used by the larger roads, showing the operating expenses and your operating income.

Mr. EDWARDS. Yes. As to the matter of leaving the small roads under private control, my line runs from east to west, and the trunk lines run from north to south. In other words, it is very much like the letter H, the trunk lines cross us, and their lines are parallel lines. The full traffic is north and south, and consequently we have a long haul. We take business at the western end of our line from the trunk lines and carry it to the eastern end in competition with the trunk line there; and, vice versa, we take it from the other line and bring it to the other end in competition with that line.

Now, that traffic—that competitive traffic—represents about 30 to 40 per cent of our total traffic. Mr. McAdoo's order No. 1 says that all the routing of business will be left to the carriers and taken away from the shippers. That order automatically took away 40 per cent of our total tonnage—confiscated that much of our revenue. Before this order was issued we had arriving a number of cars, of traffic, and I have noticed that since the order went into effect all these cars are continually arriving every day over our competing lines. We are losing the business, so I would just as leave have the Government confiscate my locomotives as to take away my business. One is just as good an asset as the other.

For example, now I have personally secured routing on a carload of automobiles moving from Toledo, Ohio, and the car was forwarded before Mr. McAdoo's order was issued. The bill of lading specified delivery over our line, but the order came out before the

car reached its destination and the car has now arrived and came over our competing line and we did not participate in the haul at all.

So the result of this is going to be, by taking away 30 or 40 per cent of our tonnage we are going to have to go to Mr. McAdoo in 30 or 60 days and ask for a part of this revolving fund to help us out; and I assume he will say, "We do not want your road." I think a great injustice will be done us.

Senator CUMMINS. Let me ask you a little more about the car of automobiles. Who diverted it?

Mr. EDWARDS. The carriers diverted it.

Senator CUMMINS. That is, your competing carriers?

Mr. EDWARDS. Yes, sir.

Senator CUMMINS. And Mr. McAdoo did not issue any order diverting that particular car, or traffic generally, did he?

Mr. EDWARDS. He said that the individual shipper should be absolutely disregarded, and all freight be routed over the shortest and most expeditious route.

Senator CUMMINS. The carrier diverted it because it could be brought to its destination more quickly?

Mr. EDWARDS. By a shorter route; yes.

Senator CUMMINS. Than it could by the other line?

Mr. EDWARDS. Yes.

Senator CUMMINS. And Mr. McAdoo is leaving, necessarily, I suppose, the execution of that order to the lines themselves?

Mr. EDWARDS. Yes.

Senator CUMMINS. They are not apt to allow the traffic to leave their lines if they can avoid it; I assume that.

Mr. EDWARDS. That is the privilege; yes. It has always been the policy of this country to encourage competition as much as possible and to discourage monopoly. That is the reason a great many of these small roads have been built, to give competition—built by the local communities to give competition—and they usually have got along haul.

Senator TOWNSEND. Why did the shipper designate your route if there was a shorter and more expeditious one?

Mr. EDWARDS. One reason was that the people interested in our road—it is a local road, you know—as a matter of personal interest, would give us their business.

Senator POMERENE. You mean the consignee?

Mr. EDWARDS. Yes. In North Carolina, my State, we have 39 independently owned and operated railroads, none of which has a hundred miles of road, but the aggregate is 936 miles, costing approximately \$15,000,000, and they serve a territory about 10,000 square miles. A great many of these roads are affected just as much as my line.

Senator POMERENE. Have those lines principally been built during the last few years, or has the development extended over a period of a great many years?

Mr. EDWARDS. I think most of them. There are only a few of them that have been built recently, within the last five years. I do not know of any of them that have been built in the last five years. We got an extension of 110 miles on our line, and we have bonds, we have 110 miles under construction, and we have about a million dollars in township bonds voted for it. But we can not sell those

bonds, of course, now, under the present financial conditions, so we left it off until after the war.

Senator POMERENE. Do you issue township and county bonds down there to build the railroads with?

Mr. EDWARDS. Yes.

Senator TOWNSEND. When did you project this extension of yours?

Mr. EDWARDS. We have been working on it several years. We have got it all surveyed, and some of the right of way secured, and we have been conducting these township collections.

Senator POMERENE. Let me understand your *modus operandi* down there. You issued township and county bonds?

Mr. EDWARDS. Yes.

Senator POMERENE. And those bonds were turned over to the company as a donation?

Mr. EDWARDS. No; they are to be delivered to us after the railroad is built as a donation, and these first mortgage bonds are limited to \$15,000 a mile.

Senator CUMMINS. How are we going to save these roads that do business under disadvantageous conditions? That is what is bothering me now. If we are going to move this traffic over the shortest and most expeditious lines, and in the most economical way, how are we going to preserve under such a system the competition idea, and at the same time use all the lines of the system?

Mr. EDWARDS. Unless this order No. 1 of Mr. McAdoo's disregarding shippers' routing is withdrawn, I do not know how you can relieve this congestion. It has got to be done to relieve the congestion, as I see it. Yet that very order confiscates 35 or 40 per cent of our traffic. But I do not see how the congested condition can be cleared up unless that is done.

Senator CUMMINS. Is it your idea that we ought to compel the Director General to give these roads the traffic they have heretofore had?

Mr. EDWARDS. No; I think we ought to be compensated for taking away this much of our business.

Senator POMERENE. How do you know that that will be taken away?

Mr. EDWARDS. I see it every day. We are losing cars every day.

Senator POMERENE. But it has been only a few days since this method of control has been in operation.

Mr. EDWARDS. It has been over 15 days.

Senator POMERENE. I know.

Senator ROBINSON. Have you any way of knowing whether you should receive shipments which you do not get?

The CHAIRMAN. Did not I understand you to say since the order went into effect that you had lost about 35 or 40 per cent of what business you had before?

Mr. EDWARDS. No; I say that would be the result of it; because this competitive business constitutes 30 to 40 per cent of our tonnage, you see.

Senator ROBINSON. Is it within the realm of probability that you get some freight that you would not have gotten if this order had not been made?

Mr. EDWARDS. I do not think so.

Senator ROBINSON. You do not think it is possible?

Mr. EDWARDS. You see, the trunk lines run this way, like the letter H, and ours is the line connecting between.

Senator POMERENE. What is your competing line that you speak of?

Mr. EDWARDS. At one end is the Southern Railroad, and the Seaboard Air Line and the Coast Line.

Senator POMERENE. Running in the same direction as yours?

Mr. EDWARDS. No; it runs north and south, and we run across.

Senator POMERENE. How can it be a competing line if yours runs east and west and theirs runs north and south?

Mr. EDWARDS. You see, we receive the traffic at the eastern end of our line and bring it in to the western end and compete with the Seaboard Air Line and the Atlantic & Southern traffic moving from Norfolk, Va., coming over the Air Line, and we can bring the same traffic over the Norfolk & Southern. That is the competitive traffic.

Senator McLEAN. Is it your expectation that your road will ever be able to pay its own way without getting tonnage that can be more economically carried some other way?

Mr. EDWARDS. Well, if we lose this competitive business I do not think we will ever be able to meet expenses.

Senator McLEAN. But, assuming that there is to be no Government regulation to interfere with the legitimate operation of the road, do you expect that it will ever be able to pay its own way?

Mr. EDWARDS. Well, we have been for 14 years; yes, until these abnormal conditions came about.

Senator McLEAN. Yes; but you say that during those years the tonnage could have been more economically carried some other way, but it has been given to you for personal or local reasons?

Mr. EDWARDS. Yes.

Senator McLEAN. I mean will it be able to pay its way legitimately in competition, ever?

Mr. EDWARDS. Well, if the long haul is absolutely disregarded, we could not.

Senator CUMMINS. It would not be possible to do all the business of this country just now on the short lines, would it?

Mr. EDWARDS. I do not think so; no, sir. As our line is so small, you see, it would hardly be considered.

Senator POMERENE. I want to understand how your township is compensated for these bonds that they issue and turn over to you.

Mr. EDWARDS. Our what?

Senator POMERENE. How are your townships down there compensated for these bonds they issue and turn over to you?

Mr. EDWARDS. Well, the bonds they issue bear the same rate of interest as the ones we give them.

Senator POMERENE. Are you going to repay these bonds later to the townships?

Mr. EDWARDS. Well, both of them mature at the same time.

Senator TOWNSEND. They issue their bonds for the township bonds, and then the township holds the bonds of the railroad.

Senator McLEAN. That means a donation?

Senator TOWNSEND. That eventually means a donation by the township.

Senator POMERENE. That is what I was trying to call out, but I could not get the statement.

Mr. EDWARDS. The township holds a first mortgage on our property.

Senator ROBINSON. Have you stated what you think ought to be done in the way of legislation in order to meet the requirements of the conditions that affect your railroad?

Mr. EDWARDS. I think this bill ought to provide that all common carriers engaged in interstate commerce should be taken over. The interests of railroads are so interwoven that they ought to be all taken over or none. I do not believe that a large line—for instance, the Seaboard Air Line—could exist if all its competitive and through business was taken away from it.

Senator CUMMINS. The fault with your position, as I see it, is this: You assume that everything is going to be taken away from you, but you have not any proof of that fact, except that during 15 days of this time your business has been interfered with.

Mr. EDWARDS. Yes; it is happening every day; you can see it every day.

The CHAIRMAN. Was your road affected before the Government assumed control by these priority orders that had been issued under the semiunified control of the roads under the War Board, as it was called?

Mr. EDWARDS. As I said, our business was bad in 1917, but we still move this competitive business; but since this order was issued we have not moved practically any of this competitive business.

Senator TOWNSEND. You think you would not be properly compensated under this bill if the Government takes over the roads, takes over your road or the other roads, and pays you what you can prove is the value of the use of your property for three years, or in case you do not agree with the Government to accept compensation on the basis of the last three years?

Mr. EDWARDS. I do not quite understand that.

Senator TOWNSEND. I say, you do not feel that this bill would properly protect you in your rights?

Mr. EDWARDS. I think it would, if we are taken in.

Senator TOWNSEND. You are taken in, are you not, so far as you know?

Mr. EDWARDS. We had a notice to that effect; yes.

Senator CUMMINS. Mr. McAdoo does not agree with you about that, does he?

Mr. EDWARDS. I understand that, although he served the notice on us.

Senator CUMMINS. And his opinion is a little more persuasive in this situation than yours.

Mr. ROBINSON. I would like to ask the witness if he has any notice from Mr. McAdoo that his line has not been taken in?

Mr. EDWARDS. No; I have not.

Mr. ROBINSON. He has notice that it has been taken in.

Senator CUMMINS. It is true that Judge Payne, the legal adviser of the Director General, has disclaimed any such effect in giving these notices?

Mr. ROBINSON. May I answer the Senator on that question?

Senator CUMMINS. Yes.

Mr. ROBINSON. Judge Payne said the notice was general, and it did not determine whether a particular line was included, that that

was hereafter to be determined. So that the witness has not had any notice that his line has not been included, but he has had notice that it was included.

Senator CUMMINS. I do not interpret Judge Payne's opinion in that way, and I have read it pretty carefully. He says in effect that these notices were sent out generally, simply to give carriers information as to the general situation, and that the only way in which any particular line can ascertain whether it has been taken over or not is to go to the Director General and find out.

Mr. ROBINSON. In answer to that I may say that one of our members appeared before Judge Payne yesterday and said, in view of some papers before the judge, where it was amended, that his line was not included. He said, "I am excluded, so I had better proceed to leave. There is no use of my remaining longer." The judge said: "Not yet; I have not decided whether you are going to be excluded or not."

Senator CUMMINS. That is what I say.

Mr. ROBINSON. So, if you will pardon me, Senator, I was saying the witness had not had notice that he was not included.

Senator CUMMINS. It would seem to me, under Judge Payne's view there should be some affirmative action on the part of the Director General in the matter before any road is taken in. I confess it is rather an unsatisfactory condition, but I do not know any way to remedy it.

The CHAIRMAN. That is a point that will have to be decided hereafter. We are here with the order as a committee, as I understood it, referring to all railroads.

If no other member desires to ask you a question, we will excuse you and have the next witness.

Commissioner ANDERSON. May I at this point put into the record something that you asked me for the other day?

The CHAIRMAN. We would be very glad to have it.

Commissioner ANDERSON. The chairman suggested it would be convenient for the committee if there was prepared a brief sketch of the English and French experience in the control of railroads by the Government. Assistant Counsel Needham of the law department of the Interstate Commerce Commission has prepared a brief sketch which I have read hastily and which appears to me to be succinct and I presume accurate.

Senator POMERENE. You mean during the period of the war?

Commissioner ANDERSON. Yes; their experience as to the law in taking over the railroads, the way they took them over, and a brief outline of the working of them since. It is somewhat less laborious to read than this big document that has been published by the Carnegie Endowment for Peace and circulated among the members of the committee, and I understood it to be the chairman's desire that it should be made part of the record.

The CHAIRMAN. Yes.

(The memorandum referred to is here printed in full, as follows:)

GOVERNMENT REGULATION OF BRITISH RAILWAYS.

I.

1. *Railways*.—British railways were privately owned and built solely for commercial uses. There were 40 companies, and where they ran through the same territory there was competition. In 1871, following the Franco-Prussian War, the British Parliament passed an act "for the better regulation of the regular and auxiliary forces of the Crown," and *inter alia* provided for the taking over of the railroads in time of emergency. A committee of railway managers was already in existence, known as the war railway counsel, and afterwards designated as the railway executive committee. The committee undertook to form a plan for the coordination of railways in war time. In cooperation with this committee was the engineer and railway staff corps, a volunteer organization of railway workers whose purpose was to develop schemes, methods, and personnel for the war railway service. It was composed of general managers of the leading railways, leading contractors, engineers, and other railway men. These committees completed their plans in 1912. "Every railway manager had in his safe a confidential, sealed, unopened document detailing a scheme of mobilization. In it he was told exactly what to do, the trains to be moved, their starting points and destinations, and the entire schedule of running if war came. So far as the operation of our railways was concerned, England was prepared."—*British Report on the War*, F. A. McKenzie.

2. *Board of trade*.—This is a committee of the Privy Council appointed for trade and foreign plantations. The president is a cabinet officer. It administers a police power over railways. Its principal functions may be stated as follows: Inspection of roads; reports of accidents; specification of safety appliances; regulation of hours of labor of railway employees, of passenger service, of packing and shipment of explosives, classification of freight, accounting, shipment of perishable articles, and conciliation of controversies regarding wages and rates.

3. *Railway and canal commission*.—This commission was established in 1888. It is a court and consists of two appointed and three *ex officio* commissioners, the two former of whom "shall be of experience in railway business," are appointed on the recommendation of the board of trade, and hold office for life, subject to removal for disability or misbehavior. The three *ex officio* commissioners are judges of the Superior Court, one for England, one for Scotland, and one for Ireland. Neither of the judges is required to sit outside of the part of the kingdom for which he is nominated. The decision of the commission upon questions of fact is final; on questions of law there is an appeal to a superior court of appeals. The decision of the court of appeals is final, except where a difference of opinion arises between any two such courts. The commission has jurisdiction over rates requiring facilities for the movement of traffic, awarding damages, establishing through routes, group rates, and the prevention of undue preferences.

The proceedings before this commission are judicial as distinguished from conciliation, the latter being effected through the board of trade.

II.

1. *Government control assumed*.—On August 4, 1914, the day war was declared, the Government took over the railways of England, Wales, and Scotland, under the act of 1871, vesting the general control in the board of trade. "The managers opened their sealed instructions and proceeded to carry them out." (See sec. 1, par. 1, *supra*.)

2. *Compensation*.—The act of 1871 provided that "full compensation should be paid to the owners" without specifying the method of arriving at it. The lines remained the properties of the companies. They retained the management of their own concerns, subject to the instructions of the railway executive committee, and the whole machinery of administration has gone on as before. "The sole purpose at the beginning was to facilitate the movement of troops. But as the war developed, as economy became more and more essential, the scope of the railway executive committee, now in supreme control, became greatly extended."

3. *Railway executive committee*.—The president of the board of trade is the official chairman of the committee. The acting chairman is the general manager of the London & South-Western Railway, Sir Herbert Walker. The committee is composed of 13, including the acting chairman, general managers of leading British railway lines. The thoroughness of preparations made, the completeness of the instructions given, and the efficiency of this organization was demonstrated at the beginning of the war, when, in addition to transporting the volunteer force to their training grounds, "the expeditionary force, numbering 120,000 men, with a vast amount of material of war, had to be transported in a maximum of time to Southampton" for embarkation to France.

"The Government gave the railways a time limit of 60 hours to make ready for dispatch to Southampton of 350 trains of about 30 vehicles each. In addition, close on the 1,200 other trains were necessary for conveying the equipment, munitions, and food supplies of the force. * * * The trains arrived at intervals averaging 12 minutes. * * * Some of them came from remote parts of the Kingdom, Wales, and the north of Scotland."

"At Southampton, for practically every day of the first three weeks of the war, we handled during a period of 14 hours no fewer than 73 of these trains, including the running of them to the boatside and the unloading of the full equipment of guns, munitions, and horses." (The foregoing quotations are from the report of Mr. F. A. McKenzie.) The continued operation of the British railways by the executive committee as set forth in the reports is profoundly interesting, and persuasive testimony to the efficiency of a committee composed of experienced railway men charged with the performance of a governmental function and relieved by law from competitive conditions.

The plans under which the traffic is carried are, in essentials:

(a) The operation of all the railroads as a single system under the direction and control of the railway executive committee.

(b) The Government makes no payment for the transportation of supplies or troops.

(c) The munitions and soldiers have the right of way over all other traffic.

(d) The other business is charged for at regular, uniform rates perfected since the war began.

(e) The Government guarantees to make a settlement at the end of the war by which each road will receive for the period of the war a yearly revenue equal to the earnings of 1913.

(f) The Government takes over all surplus revenue (above 1913) and finances current expenses, which includes interest and dividends.

5. *Priority.*—There is a priority committee, consisting of representatives of a few of the departments of the "Ministry of munitions of war, the Admiralty, the railway department, Indian office, war office, contract department, post office, office of works, and board of trade, the latter representing the interest of private industries." The committee meets every day and no priority can be granted unless all present agree. There is, however, an appeal to the minister of munitions, who has final authority. At present the work is classified as follows:

(A) A Government war control, which signifies:

(1) Any contract placed by the Admiralty, the war office, or the ministry of munitions.

(2) Any contract for naval or military equipment placed by an allied Government by or with the consent in writing of the Admiralty, the war office, or the ministry of munitions.

(B) Certified war work, which signifies:

(1) Work on a contract or order which the Admiralty the war office, or the ministry of munitions has certified in writing to be war or munition work.

(2) Work which the minister of munitions has directed to be treated on an equality with war work.

(B) Merchants shipping work certified in writing by the board of trade to be munition work.

These general subdivisions are each subdivided. Thus Class A is subdivided—

(1) Most urgent war work.

(2) Very urgent war work.

(3) Urgent war work.

(4) War work.

So far as can be ascertained, there being no official reports, trains are run on time, on regular and emergency schedules.

6. The general jurisdiction and powers of the board of trade over the railways still continues, and additional powers have been given the board to make regulations regarding war subjects and conditions, such as: Taking possession of cars owned by railroads and private owners and using them on such routes as will best serve the interest of the country; securing prompt loading and unloading cars; the movement of trains, the observance of routing and priority routing; curtailing operations and facilities and traffic not required for the general welfare; suspending existing regulations and requirements of governing boards. Penalties are imposed for any violation of these regulations.

7. The jurisdiction and powers of the canal commission are not withdrawn but are subordinated to the war control. The fact that the reports of this court are suspended shows that little, if anything, has been done by the court since the rates for shipments, other than Government shipments, have been equalized.

THE FRENCH RAILWAYS.

From the data at hand we draw the following conclusions:

MILEAGE.

1. The six great railway systems operate about 25,000 miles of railway. In addition there are narrow-gauge railways and railways "of local interest" covering about 4,000 miles.

CONSTRUCTION.

2. The first lines were located under State supervision and were constructed or partially constructed by private persons and companies who received concessions from the State. In 1842 the first law was passed regulating the construction of roads. This law laid the foundation of the plan under which the railways have since been developed, and mapped out nine main lines, running from Paris to the frontiers and from the Mediterranean to the Rhine and to the Atlantic coast. In 1852 to 1857 the railways were concentrated in the hands of six great companies, the State retaining and exercising a strict supervision of them regarding rates and operation. Each of these companies was allotted a definite sphere of influence, thereby reducing competition, and each was granted a concession for 99 years from the date of its formation, the concessions thus terminating at various dates between 1950 and 1960, when the entire railway system will pass to the State without compensation. In return for the privileges granted the companies undertook the construction out of their own unaided resources of 1,500 miles of subsidiary lines, but failed to raise the capital to complete the mileage. In these circumstances the State agreed to guarantee the interest on the capital. The sums it paid in this was to be regarded as advances and to be reimbursed in the future with interest at 4 per cent. This proved successful and the projected lines were completed. Demands for more lines arising and the existing companies being disinclined to undertake their construction, the Government inaugurated a system of direct subventions to encourage the development of branch and local lines, and local authorities were empowered to contribute a portion of the required capital. Many small lines were begun, but the companies were unable to complete them and the State supplied the funds, taking over these small lines. Some of the small lines were assigned to the great companies and others have been retained by the Government.

In 1880 and 1883 there was a further reorganization and the Government guaranteed a minimum rate of interest on the capital investment to both old and new lines. Prior to this the Government had been supplying money for new construction, but by the act of 1883 the companies partially relieved the Government of its obligation by agreeing to contribute a certain proportion of the cost of the new lines and to provide the rolling stock. The sums paid out in respect to guaranteed dividends were to be treated as advances and paid back to the State out of profits made when the profits permitted.

The Ouest System became the heaviest borrower from the Government and as result was taken over January 1, 1909, so that this system and the short lines above referred to are owned by the State.

The great railway systems of France are as follows:

1. The Nord, which serves the rich mining, industrial, and farming districts of Nord, Pas-de-Calais, Aisne, and Somme, connecting with the Belgian railways at several points. Its main lines run from Paris to Calais, via Creil, Amiens, and Boulogne, from Paris to Lille, via Criel and Arras, and from Paris to Maubeuge, via Creil, Tergnier, and St. Quentin.

2. The Ouest-Etat, a combination of the West and State systems. The former traversed Normandy in every direction and connected Paris with the towns of Brittany. Its chief lines ran from Paris to Le Havre, via Mantes and Rouen, to Dieppe, via Rouen, to Cherbourg, to Granville to Brest. The State railways served a large portion of western France, their chief lines being from Nantes, via La Rochelle, to Bordeaux, via Saintes, Niort, and Saumur, to Chartres.

3. The Est, running from Paris, via Chalons and Nancy, to Avricourt (for Strassburg), via Troyes and Langres, to Belfort, and on, via Basel to the Saint Gotthard and via Reims and Mezieres, to Longwy.

4. The Orleans, running from Paris to Orleans, and thence serving Bordeaux via Tours, Poitiers and Angoulême, Nantes via Tours and Angers, and Montauban and Toulouse via Vierzon and Limoges.

5. The Paris-Lyon-Méditerranée, connecting Paris and Marseilles via Moret, Laroche, Dijon, Macon and Lyons, and with Nîmes via Moret, Nevers and Clermont-

Ferrand. It establishes communication between France and Switzerland and Italy via Macon and Culoz (for the Mt. Cenis Tunnel) and via Dijon and Pontarlier (for the Simplon), and also has a direct line along the Mediterranean coast from Marseilles to Genoa via Toulon and Nice.

6. The Midi (Southern) has lines radiating from Toulouse to Bordeaux via Agen to Bayonne via Tarbes and Pau, and to Cette via Carcassonne, Narbonne and Beziers. From Bordeaux there is also a direct line to Bayonne and Irun (for Madrid), and at the other end of the Pyrennees a line leads from Narbonne to Perpignan and Barcelona. (Ency. Brit. Vol. X, p. 787).

The Grande Ceinture Railway is a belt road, 75 miles long, that circles Paris at an average distance of 10 miles. In war time the War Department can use this road without payment for services rendered.

REGULATION FOR WAR.

3. In 1888 a commission was constituted known as Commission de Réseau. This is a mixed commission, including for each company the director of the road, called the technical commissioner, and from the military a number of staff officers. The duty of this commission was to prepare in time of peace all operations for mobilization and concentration of troops, and to direct the railroad systems from the time of any declaration of war, the commission to act in connection with the Staff Office of the Army with the War Minister the head of the War Council. This commission furnished to the railroads sealed instructions indicating in detail the operation which they must execute upon a declaration of war.

At midnight, the 28th of July, the War Minister and Minister of Public Works requisitioned all the resources of the railroads for military needs. The sealed instructions were opened and between the 2nd of August and the 30th of September, 1914, 20,000 trains transported 400,000 officers and soldiers, 42,500 horses, 107,000 wounded, and 47,000 cars of munitions and food supplies. This was done under the direction of the railroad commission. On the 17th of August the government sent to each railway system a proclamation congratulating the railway companies on their work during the first days of mobilization.

All the lines are handled as one system except the parts covered by the German invasion.

RATES.

4. The conventions entered into in 1883 are in force for all companies, including the system owned by the State. The agreement stipulates that all soldiers and sailors shall travel for one-quarter the regular tariff in peace time. Men employed on railways in peace time are not required to do any military training; in war time they are at the special disposal of the chief of staff. In war time when the whole of the plant of a railway is not required for military transfers, the companies are paid one-quarter of the maximum rate for all military transportation. When the whole plant is taken over one-half the maximum rate is paid to the railway company by the Government. The companies may use such portions of their road for commercial purposes as are not required by the government. The tariff in ordinary times is made up of two items, viz, the toll (*droit de péage*), being the remuneration to cover the cost of the permanent roadway, and second, the rate of fee for transportation. In May there was pending an application from the railroads asking for a 15 per cent increase in rates applicable to commercial traffic, accompanied by financial reports showing the need for increasing rates.

The two companies which have suffered most by the war are the Northern and the Eastern of French railway systems, both of which were at times compelled, in 1915, to partly suspend the whole of their commercial traffic to meet the military requirements of the nation. The lines which have remained comparatively free for commercial traffic are operating under quite abnormal conditions and outside of tariff provisions. The receipts from military transports were largely increased, but there was a large decrease in the receipt from passenger traffic and what is called "slow goods traffic."

Every railroad is crowded but under the present direct management, traffic seems to be moving with regularity under Government supervision.

CHAS. W. NEEDHAM,
Assistant Counsel.

Commissioner ANDERSON. May I add one thing, because it is a matter of some importance and has been misinterpreted very widely. Before the House committee some question arose as to the effect of

the Federal tax clause in section 1. The committee will remember that it is provided that Federal taxes in excess of those assessed in the year ending June 30, 1917, shall not be charged into operating expenses, which leaves them to be paid out of the standard return.

When that matter arose in the House committee some member of the committee said, in the absence of this provision of yours the Government would be just taking money out of one pocket and putting it into the other. I said, in substance, "Exactly, and in order to prevent that this provision has been put into section 1." Nevertheless, it has been published all over the country, so far as I am told, and has become apparently the dominant view that I said at that time the war taxes, assessed upon the railroads, which might be as high as ninety millions, would be paid by the Government taking the money out of one pocket and putting it into the other. Even as supposedly accurate a publication as the *Traffic World*, which has a special interest in these matters, has in its paper dated January 12 the following article.

Mr. Anderson estimated the total at \$90,000,000; that is, the war taxes. "Under Government control," he said, "that will be merely the taking of money from one pocket and putting it into the other."

I think it should appear as a matter of record here that that is the exact reverse of what I really said, and the exact reverse of the operation of the Federal tax clause in section 1 of the suggested bill.

The CHAIRMAN. Mr. Robinson, we will take your next witness.

Mr. ROBINSON. I will introduce Mr. Charles E. Ingersoll, the president of the Midland Valley Railroad.

STATEMENT OF MR. CHARLES E. INGERSOLL, PRESIDENT OF THE MIDLAND VALLEY RAILROAD.

The CHAIRMAN. Give your full name, address, and official connection.

Mr. INGERSOLL. Charles E. Ingersoll, residing in Philadelphia. I am president of the Midland Valley Railroad, operating through Arkansas, Oklahoma, and Kansas.

In the first place, Mr. Chairman, it is needless to say that the owners of this property are quite willing to make any kind of a donation to the Government to help the present serious condition of affairs. But if it is desired that an act should be formed that should contemplate the estimation of value before the taking over by the Government, we feel that we should explain in a short way our condition. As the act was originally introduced we do not feel that a compensation was provided for our condition.

We operate 385 miles of railroad. We were incorporated under the State of Arkansas and began construction in 1905 from Fort Smith, Ark. Our plan was to serve a coal territory in Sebastian County, Ark., and build in a northwesterly direction. We built from 30 to 50 miles of road every year up to 1912, when we reached Wichita, Kans. The two terminal towns, Fort Smith and Wichita, are well established towns, but we have gone through an intermediate territory, much of which has not railroad facilities, where we think we have been of great benefit to the public service. We go through the towns of Nelagony, Muskogee, Tulsa, Pawhuska, Arkansas City, then reaching Wichita. We are not connected in any way with any trunk line.

We are entirely independent. We built in anticipation of what we thought was the railroad need of that territory.

We have confidence in our territory and we are growing up with the country. I believe that if you could have the opinion of the commissions of Arkansas, Oklahoma, and Kansas, you would learn that we have lived under the law; we are trying to serve our public. Not only would the commissioners, I believe, give you that impression, but the public generally would say that we are attending to our business. In the first place, it is our incorporated obligation to serve the public, and we have been in the railroad business for a good many years. We feel that it is to our interest to serve the public, and we are rather proud of the success that we have had in serving the public in those very actively growing communities of Muskogee and Tulsa, Pawhuska, and other towns, where there has been a very large oil development, as you gentlemen are aware, in the last seven or eight years.

The difficulty that we have with the act, Mr. Chairman, is that the first section does not provide for a case similar to our own. Under the first section of the act our net earnings, our average net earnings for the year ending June 30, 1917, are about \$440,000; our earnings for the year ending this calendar year, 1917—for the year, not the average—amounted to about \$850,000.

Senator POMERENE. You do not mean by that over and above your interest?

Mr. INGERSOLL. No; before interest was paid.

Senator KELLOGG. Your net earnings, you mean?

Mr. INGERSOLL. I am talking of net earnings. The act provides a three-year average, and our net earnings under that would be \$457,000, while for the year just closed we earned \$850,000.

Senator KELLOGG. What is the reason for increasing so rapidly?

Mr. INGERSOLL. The very increasing development of conditions in that territory. It is not due to war conditions, particularly, beyond the fact that of course war generally has stimulated the production of coal and the production and use of oil; but we feel that we are only coming into a development that we anticipated when we began the construction of our road, and for seven or eight years had a very heavy burden of financial loss in carrying it.

Senator KELLOGG. Can you give those earnings for a series of years—five or six years?

Mr. INGERSOLL. How is that, Senator?

Senator KELLOGG. Can you give the net earnings for a series of five or six years past?

Mr. INGERSOLL. I can; yes, sir. I have the figures for the year ending June 30, 1917, 610; June 30, 1917, 452; 1915, 277; 1914, 248; 1913, 270. Do you desire any more?

Senator KELLOGG. No; that is enough.

Senator ROBINSON. The figures that you are giving there are, of course, in the thousands. You did not say so.

Mr. INGERSOLL. I meant thousands.

Senator ROBINSON. The record would not show thousands.

Mr. INGERSOLL. That is what I meant, thousands.

The CHAIRMAN. How long has your road been completed from your terminals in Arkansas to your terminals in Kansas?

Mr. INGERSOLL. About three years. My recollection is that we got into Wichita about 1914. I think it was 1914—either 1913 or 1914.

Senator ROBINSON. What was the rate of return on your investment?

Mr. INGERSOLL. The rate of return for 1917 was 3.49 per cent.

Senator ROBINSON. Is that for the calendar year or the fiscal year?

Mr. INGERSOLL. I am talking of the fiscal year. All these figures are for the fiscal year.

Senator ROBINSON. You gave one figure for the calendar year, if I am not mistaken.

Mr. INGERSOLL. That is what I was saying we are now earning.

Senator ROBINSON. Yes.

Mr. INGERSOLL. The rate of return for 1916 was 2.57 per cent; the rate of return for 1916 was 1.57 per cent; 1914, 1.41 per cent; 1913, 1.53 per cent.

Senator ROBINSON. What would have been the rate of return on the earnings for 1917, the calendar year?

Mr. INGERSOLL. For the calendar year I presume about 4½ per cent. I have not got that figure, but I could easily, of course, acquire it.

Senator TOWNSEND. Four and a half per cent?

Mr. INGERSOLL. Four and a half per cent, or may be 5.

Senator TOWNSEND. On your investment account or stock?

Mr. INGERSOLL. On the investment account. Our bonds and stocks outstanding amount to about \$17,000,000. We can show actual vouchers and payments made for over \$15,000,000.

Senator CUMMINS. How much is that per mile?

Mr. INGERSOLL. Our difficulty is in the first section; as from the figures I have given you we do not feel that we could come within the first section. The first section would practically cut our net earnings in half.

Senator ROBINSON. Can you state what the average return would be; what the rate of return would be for these three years that are contemplated in the first section?

Mr. INGERSOLL. I think about 2 per cent, sir. Perhaps a little bit more—two and a quarter. We do not feel that it is fair or reasonable that we should be thrown into the third section of the act. We think our position should be recognized just as those roads are recognized who are able to take the three-year average in the first section.

While Commissioner Anderson has said that the third section is not in the nature of an appeal, it still constitutes a tribunal. We did not know how that tribunal would act. Those roads which are able to take protection under the first section know exactly the measure of their value. If we go to the third section, to the three auditors, we do not know where they will find our value.

We also feel that the first section should be somehow enlarged. I appreciate it is difficult unless a very great discretion is given to the President. You gentlemen have heard from a great number of these small roads, and everyone of them is different and has different conditions connected with it, and after studying the whole situation thoroughly and listening to all that has been said here for the last two weeks, I do not see how you are going to enlarge that first section unless you give a very great power to some one.

Senator CUMMINS. What is your annual interest charge?

Mr. INGERSOLL. Our annual interest charge is about \$250,000, the fixed charge about \$300,000, our income charge about \$500,000 or \$525,000.

The CHAIRMAN. That would represent about what rate on your investment?

Mr. INGERSOLL. Sir?

The CHAIRMAN. You say that would represent about what rate on your investment?

Mr. INGERSOLL. I would say roughly about 4 per cent, sir. Our investment is in cash \$15,000,000 and in securities \$17,000,000, and it is whatever that would work out to be, sir.

The CHAIRMAN. On your earnings, as you mentioned a moment ago, for the three years, your average earnings were about 2, did I understand you to say?

Mr. INGERSOLL. Two and one-fourth to two and one-half, I think I said, sir.

Senator POMERENE. You stated that your stock and bonds aggregated about \$17,000,000?

Mr. INGERSOLL. Yes, sir.

Senator POMERENE. What proportion of that is stock?

Mr. INGERSOLL. \$8,000,000 is stock and about \$10,000,000 is bonds. Our capital stock and bonds—the whole capitalization—is about \$17,500,000, I think, sir.

Senator POMERENE. What consideration was paid for the stock?

Mr. INGERSOLL. This stock? Why, practically 80 per cent to par for it.

Senator POMERENE. In cash?

Mr. INGERSOLL. Yes, sir.

Senator POMERENE. And how were the bonds sold?

Mr. INGERSOLL. They were sold subject to the discount, and we sold our bonds from 90 to 95. I should say in that connection that, of course, like all railroads, we have had a great deal of grief; like new railroads we have had a great deal of grief and a great deal of trouble. We have had several reorganizations, all, however, voluntarily made, and so, little by little, the original money that has been put in the property, which was expected to make a profit, now stands in its stock ownership practically at par. Do I make myself clear to you, sir? So, therefore, we feel that the first section of the bill should be enlarged sufficiently to take in roads of our character. and that is our first serious difficulty.

Senator POMERENE. How has your road been affected by this letter of the Director General?

Mr. INGERSOLL. I can not say that it has been affected at all, so far, Senator.

Senator POMERENE. How do you anticipate that it will be?

Mr. INGERSOLL. We have all the orders, so we anticipate being taken in.

Senator POMERENE. How do you anticipate that it would be effected?

Mr. INGERSOLL. It depends to what extent the Director General assumes control of the western railroads. The principal acuteness

of the railroad situation is here in the East. In our country there is no difficulty in the movement of traffic. Matters are moving smoothly from an operating point of view.

Senator POMERENE. Then you do not anticipate that there is any real reason why there should be any serious change in the present status?

Mr. INGERSOLL. Senator, I do not, unless it be that—well, we are a cross-line road offering our traffic to the trunk lines that cross us. Unless it be the intention to extend the Federal control to such an extent that we are not able to get the benefit of that competition that we have now with our cross line trunk lines.

Senator POMERENE. Tell us what you think ought to be done for your road in the event that it is taken over and operated by the Government?

Mr. INGERSOLL. We should have some sort of a guarantee, it would seem to me, on the basis of what we are doing, not what we did on an average of three years previous, when we practically had no history. We are making our own history on the line of what we went into the enterprise to do.

Senator POMERENE. When was this road built?

Mr. INGERSOLL. We were incorporated in 1905, in Arkansas, and we started to construct at that time, and have built from 30 to 50 miles a year up to 1912 or 1913.

Senator KELLOGG. That is, you want to be allowed to receive what you would naturally earn, what you expect to earn?

Mr. INGERSOLL. It would seem that would be reasonable, Senator.

The CHAIRMAN. What per cent of your rolling stock do you own; I mean of the rolling stock that you use?

Mr. INGERSOLL. We own about 1,000 coal cars and about 600 box cars. To answer your question technically, Mr. Chairman, the debit balance is about even with us as to car service. In other words, we are paid by people who use our cars about as much as they pay us.

Senator KELLOGG. You mean railroads that use your cars?

Mr. INGERSOLL. Railroads.

Senator KELLOGG. As you pay them, you mean?

Mr. INGERSOLL. Sir?

The CHAIRMAN. As you pay them, you mean? You get about as much as you pay out?

Mr. INGERSOLL. About the same; yes, sir. It will vary some year by year, but that is what it is now.

Senator CUMMINS. This guarantee in the first section would leave you about \$70,000 for the interest on your bonds?

Mr. INGERSOLL. Yes, sir.

Commissioner ANDERSON. Mr. Chairman, may I ask a question at this point?

Mr. INGERSOLL, do you think this provision added to section 1 would meet what you think are the necessities of your situation?—

Provided, however, That if the President shall find that the condition of any carrier during all or a substantial portion of the period of three years ended June thirtieth, nineteen hundred and seventeen, was, because of nonoperation, receivership, or other undeveloped or abnormal condition, so exceptional as to make the basis of earnings hereinabove provided for plainly inapplicable as a fair test for just compensation, then the President may make with such carrier an agreement for such amount as would be just compensation as under the circumstances of the particular case he shall find fair and consistent with the public interest.

Mr. INGERSOLL. As far as I can understand that section as suggested by Commissioner Anderson, it would seem to cover it. What we want is a class. We want a class other than the 3-year average class. Now, I take it that is what the commissioner is trying to cover. I do not know whether it is exceptional. If you gentlemen will go over the western lines, you will be amazed at how many western lines will be very seriously hurt by the 3-year average class. Not only very small lines, but considerable lines. They will be very seriously hurt by it, and I think you will have to admit that there will be a very large number of railroads that will have to either appeal from the first section or have a class provided for, large enough to take them in in the first section.

The CHAIRMAN. You mean that class of roads, whether long or short, taking in the 3-year period, would not be given enough compensation to meet the legal obligations on their securities or indebtedness?

Mr. INGERSOLL. Yes, sir; I would go even a step further than legal obligations. I do not understand that the Government is undertaking to merely keep these roads solvent. It is recognizing the principle that they are entitled to a value as represented by their investments. That investment may be made in bonds or it may be in stock. There was some gentleman here the other day who had no bonds on his road at all. He is just as much entitled to consideration from the United States as a man who is swamped with an interest charge.

Senator CUMMINS. You would be satisfied if there were added to the provision just read by Mr. Anderson something like this:

Provided, That the compensation shall not exceed the necessary operating income for the year nineteen hundred and seventeen.

Mr. INGERSOLL. It seems to me that is fair. Of course we fellows who go into building up the country have a speculative future. This is not the time or the occasion when we can expect recognition of that speculative interest.

Senator CUMMINS. You would be satisfied with the compensation tested by that income for 1917?

Mr. INGERSOLL. Yes, sir; although I anticipate that our income from January 1, 1918, to June and through all the year will be materially more than for 1917; but that, I feel, would be a reasonable consideration in regard to the situation.

Senator KELLOGG. There are undoubtedly some railroads in the United States just completed as to which it would be unfair to take 1917.

Mr. INGERSOLL. I think there is no question about that, Senator.

Senator KELLOGG. The clause just read by Mr. Anderson in effect leaves the whole thing as to every railroad up to the President.

Mr. INGERSOLL. If the clause says that; yes, sir.

Senator KELLOGG. He is the judge of the exigencies and the peculiar conditions which takes a road out of what he calls the standard. Why not then just either confer upon the President or a commission the power to find what is a reasonable compensation and guarantee it.

Senator TOWNSEND. For each road?

Senator KELLOGG. Yes.

Mr. INGERSOLL. I can not offer any objection to that. I think it really comes to that. Of course, it is a vast power to put into the hands of the President or a commission, but it practically comes to that.

A further difficulty that we have is presented in section 3. This is in the nature of an appeal. It is a provision to take care of those classes of cases that can not properly be protected by section 1. We feel that the appeal should be made, in the first instance, to an independent body. That body should be represented by the Interstate Commerce Commission, because all the figures are in their possession, but the tie of the situation or the balance of the situation, as to what these people are entitled to receive and what these railroads are entitled to receive for the use of property, is not necessarily in the possession of the Interstate Commerce Commission. The Interstate Commerce Commission should distinctly have one representative on that body. It would occur to me that a fair additional representative would be a judge of the Circuit Court of the United States, and the representative should be a business man or a man appointed by the third carrier whose property is under consideration.

I like the idea, if I may be permitted to say so, of the United States judge. He is above local influence. He is outside of politics. He is in the habit of determining and weighing evidence of people and determining values. I think that would be a fair tribunal and a fairer tribunal than to have it entirely in the control of the Interstate Commerce Commission. In saying that, I do not desire in any way to criticise the Interstate Commerce Commission. Much of the work of the Interstate Commerce Commission, as I see it, for the railroads, has been of infinite value. I do not believe there is a railroad man who would like to go back to the old system. Our difficulty is that the Interstate Commerce Commission does not always have the courage, if I may use the expression, to put into effect the orders that they feel and that they have said are necessary.

The Interstate Commerce Commission has said for the last 18 months that the carriers must have more revenue. Largely they have not been in the habit of putting that expression of opinion in effect. Under the law, they are the authority that must give the increase.

Senator KELLOGG. In effect, the Interstate Commerce Commission has said that the railroads must have more revenue, and therefore the Government had better take them over, because we do not want to give them the revenue. That is about the size of it, is it not?

The CHAIRMAN. Are there any further questions? Mr. Ingersoll, is there any other phase of the bill which you desire to discuss?

Mr. INGERSOLL. No, sir.

Mr. ROBINSON. Mr. Chairman, may I ask the witness a question with reference to the amendment suggested by Mr. Commissioner Anderson?

The CHAIRMAN. Yes.

Mr. ROBINSON. Mr. Anderson read the amendment and the witness said he thought that would be agreeable. I want to ask him whether he understood that amendment to be effective only in the event of an agreement, and if not, his road would then be left without any return pending an adjudication in some form. Do you understand that, Mr. Ingersoll?

Mr. INGERSOLL. I understand that feature, Mr. Robinson. As I said before, I think this is a great power, but it must be put somewhere and I believe the best place to put it is with the President. I do not believe an act can be framed that is going to take care of all the individual cases of the railroads. That power must be put somewhere. Of course, I do not know that I understand fully all the features of Mr. Anderson's suggested amendment.

The CHAIRMAN. You seem to have grasped it pretty fairly.

If there are no other questions, we will excuse you, Mr. Ingersoll.

Mr. ROBINSON. Mr. Chairman, I would like to introduce Mr. W. L. Luce, president of the Electric Short Line Railroad. It is electric in name only. It operates a steam road, but has the word "Electric" in its title.

STATEMENT OF MR. W. L. LUCE, OF MINNEAPOLIS.

The CHAIRMAN. What road do you represent?

Mr. LUCE. I represent the Electric Short Line Terminal Co. The Terminal Co. has about 12 miles of track, a passenger station, a depot, and freight house. It has been in operation about three years.

Senator TOWNSEND. What is the name of it?

Mr. LUCE. The Electric Short Line Railroad Co.—Terminal Co. It represents an investment of about two and a half million. We have a railroad that was completed—or a certain part of the construction was completed—about three years ago. That operates from Minneapolis to Hutchinson. It is the shortest route between the two points. The Great Northern on the north and the Milwaukee on the south reach the same two points. It is the end of the three roads. We have about 75 miles of right of way deeded and about \$100,000 investment in grading and supplies.

The road during its construction period has about been self-sustaining. Its operating income and expenses have about balanced.

We have joint arrangements with the nine roads that enter Minneapolis. Seven of those roads do not reach Hutchinson, and we receive a fair proportion of the business. If the seven roads are taken over by the Government and our road is not taken over, we need not look for business in that direction, notwithstanding we are the short line between those two points.

Senator POMERENE. Why?

Mr. LUCE. Because it would not be natural to switch it off another road. It is all one family, and it would naturally go one way. It would go over the Government railroad.

Senator POMERENE. Do you mean to say that the freight you now get is shipped by an unnatural route?

Mr. LUCE. Oh, no, sir. Suppose the Burlington and the Rock Island or any of the large railroads that haul coal or other commodities going to Hutchinson, Minn., would deliver to us. We could take it to Hutchinson as well as they could and deliver to the Great Northern Road; but all the large roads belonging to one power they would naturally take the business away and turn it over to them unless we were under Government ownership or control.

The CHAIRMAN. Do I understand you to say that your road is the shortest line?

Mr. LUCE. Yes, sir. It is a mile shorter than the Great Northern and 15 miles shorter than the Milwaukee. Our road has had a nice business. The moving spirit in the road was called away to war—my only son—and the financial conditions have been such that we have not made any progress for about a year and a half in the way of building the road. We own about 300 cars and 8 engines. The railroad of 60 miles has a debt of \$15,000 a mile against it.

Senator ROBINSON. How many miles of the line?

Mr. LUCE. Sixty.

Senator ROBINSON. All completed?

Mr. LUCE. Yes, sir. Then there is 75 miles of the right of way on which there has been \$100,000 spent in grading and supplies.

Senator ROBINSON. The total length of your line projected is about 135 miles?

Mr. LUCE. About 600 miles.

Senator ROBINSON. Six hundred miles?

Mr. LUCE. Yes, sir. We have been surveying and have acquired a considerable right of way; but as to the 75 miles due west of where we are now the right of way has been deeded.

Senator ROBINSON. When did you begin to build the road?

Mr. LUCE. We commenced buying terminal property about eight years ago.

Senator ROBINSON. How long since you discontinued active construction?

Mr. LUCE. Last year was the first year we actually stopped. We did make about \$50,000 worth of betterments, but no construction.

The CHAIRMAN. How long have you been in actual operation?

Mr. LUCE. Three years.

Senator ROBINSON. What were your earnings for these years?

Mr. LUCE. A hundred and ten, a hundred and twenty, and a hundred and forty.

Senator KELLOGG. You mean thousands?

Mr. LUCE. Yes, sir; thousands.

Senator KELLOGG. That is, in the three years?

Mr. LUCE. Each year; yes, sir. Our last year's income was about 15 per cent more than the gross income the year previous, and our expenses were about 30 per cent higher.

Senator ROBINSON. These figures you have quoted represent the net?

Mr. LUCE. Gross.

Senator KELLOGG. You did not have any net?

Mr. LUCE. No, sir; that is a remarkable showing for a road during its period of construction.

Senator KELLOGG. You mean that it did not pay any interest on its bonds?

Mr. LUCE. No, sir.

Senator KELLOGG. Col. Luce was the man who built the road?

Mr. LUCE. Yes, sir.

Senator KELLOGG. Referring to this matter of the Government taking over the lines and injuring you: What you have in mind is this. The Northwestern does not go to Hutchinson.

Mr. LUCE. No, sir.

Senator KELLOGG. If the Northwestern delivered coal at Minneapolis it would naturally deliver it to another Government road?

Mr. LUCE. Yes, sir.

Senator KELLOGG. Just the same as though the roads were consolidated?

Mr. LUCE. Yes, sir.

Senator KELLOGG. But if they were not consolidated, and the Government did not operate them, you would have a chance.

Mr. LUCE. An equal show with the other roads. It really works stronger than that. Patriotism is pretty high in our State. If the road is Government owned the people will travel in preference over that Government-owned road and we are handicapped in that way. While our case differs a little from other roads, I think there are a great number of them that will be affected if the Government does not take them over. It will mean that about three-quarters of those roads will have to go into the hands of receivers, in my opinion.

Senator KELLOGG. You exchange freight cars with those other roads?

Mr. LUCE. Yes, sir. Our exchange amounts to about \$600 a month.

Senator KELLOGG. You have more than your share of equipment?

Mr. LUCE. We have more than we need. Had we constructed as many miles as we anticipated we would have needed all our equipment.

Now if the larger roads—the long roads—are taken over by the Government, the smaller roads are, to a certain extent, whipped, in that the big ones are better able to get increases. They have power, money, and time to make moves which are usually successful.

Senator KELLOGG. They have not been very successful.

Mr. LUCE. Not lately; I beg your pardon. If I am correct in my statement, the Pennsylvania about two years ago, or three years ago, was earning net over operating expenses \$5,000,000 a month. I speak of that because it is recognized as a standard road of the United States. About July, August, and September they were earning only a net of \$1,000,000 a month. During the month of January I doubt if they have earned much over their fixed charges. The high cost of everything has applied to that road as well as others, and I think that is the condition of all the roads of the United States. The small road needs a helping hand or a protecting hand in this particular situation more than the larger roads.

Directly west of Hutchinson is 40 miles to another road. It is that way for 100 miles. There are great farms along that stretch of land. We have hogs, cattle, grain, farm products, and we bring in a carload of milk to the city of Minneapolis. However, under the conditions as I see them we will be whipped.

Senator KELLOGG. You serve mainly an agricultural community?

Mr. LUCE. Yes, sir. As a war measure I think what we are producing is as necessary as the things that you draw out of Pittsburgh or elsewhere.

I feel that if the Government should take them over they should be allowed compensation sufficient to let them live. I mean these new roads. I do not believe in being particularly liberal, but I do believe in seeing that they receive enough to pay their help and the interest on the bonds, if the bonds were legitimate obligations or were bonds that were sold at par and were considered worth par at the time they were sold.

Senator POMERENE. Assuming a road never earns enough to pay any dividends or interest on its bonded debt, and that, in your judgment, never should have been built, what do you think the Government should do with a road of that kind?

Mr. LUCE. Many roads that to-day they would say never should have been built may turn out to be all right. We all know the history of the Flagler road. That was a road that everybody thought would not be a success. It was like throwing money away, but now it stands in earning power with the other large roads. It went for 10 or 15 years as a losing investment. All our big roads, or most of them, are roads that were built up from a number of small investments. Two-thirds of them, it is safe to say, looked like poor investments.

Senator POMERENE. That is true in that particular instance, but there are a large number of roads in this country that were built by promoters who knew more about getting money out of communities than they did about the railroads themselves. Now, how are you going to deal with roads of that kind, and what should be done with them?

Mr. LUCE. If the Government takes hold of them and the roads are not wanted, tear them up and scrap them. Use these rails where the Government needs them or where rails are wanted.

The CHAIRMAN. Do you know any considerable number of roads—you need not mention their names, of course—that, in your judgment, were unnecessary?

Mr. LUCE. No, sir; I do not. I know of roads that I knew were poor investments, but I would not say that they did not serve the community and the community wanted them in many cases, and paid for them, or paid liberally toward their construction.

Senator ROBINSON. Would the amendment to section 1 suggested by Mr. Anderson, in your judgment, meet the requirements of the conditions that affect your road?

Mr. LUCE. I am not prepared to say. Any law that would take over the small road and treat it as fairly as the big road ought to be satisfactory, and in our case is absolutely satisfactory. Take our property, and never mind the several millions that we have invested in it; just take care of the road until the war is over, and then the road will work out its own destiny very satisfactorily.

Commissioner ANDERSON. Mr. Chairman, may I suggest, in connection with Senator Kellogg's question, that it may be well to clear up the record at this time on the point to which this question has reference?

The Senator's question would seem to indicate that the Interstate Commerce Commission had refused of late practically all increases to the railroads. It is conceivable that this committee may be asked to frame legislation upon the theory that the roads have been kept in a state of starvation.

Senator KELLOGG. I might suggest that I will withdraw the remark. It may be stricken out.

Commissioner ANDERSON. I have no objection to disposing of it in that way, but I was a little fearful that the common current report, as it has cropped out here several times, might affect the committee. I thought the committee might be affected by the repeated statement that the roads were "in a state of starvation," and I thought that a

statement of about four sentences to clear up the situation might be material at this point.

The CHAIRMAN. Since the matter has been mentioned, you may make your statement to clear up the record

Commissioner ANDERSON. I want to say only a few words. It is a fact, as I think I have stated before, that as I was not a member of the commission until three months ago, and there is no personal tenderness on my part as to any criticisms as to what the commission may have done or not done.

I had read the current reports, but when I came here three months ago I got into close quarters with the real facts, and not the published facts—and there is quite a distinction—I was astonished to find what the actual treatment of the roads had been. I was astonished to find that the Interstate Commerce Commission, in last June, in the Fifteen Per Cent Case, had granted increases in the Eastern district amounting to almost \$100,000,000 and that they had denied further increases in rates in the eastern district estimated to amount to only \$57,000,000. In other words, substantially two-thirds of the increases sought last spring, were, as to the eastern district, granted.

It is also true that up to June 30 of this last year, and I think it is true up to September 30—I stand on the statement up to June 30—the railroads of this country that have intrinsic merit and had not been ruined by mismanagement were never in such a state of prosperity as to net return, as to money available for interest, dividends, and surplus as they have been during the two years past.

The railroads of the country, instead of having been starved for the past two years, are in a state of richness never dreamed of until within the past two or three years; and the Interstate Commerce Commission, in the light of the absolutely demonstrated fact, would not have been warranted in granting larger increases than it has granted.

Senator UNDERWOOD. I would like to ask a question at this point. The last witness referred to the Pennsylvania Railroad and said that they had earned \$5,000,000 a month and that had fallen off to \$1,000,000. That was an astonishing statement. I do not mean to say that it is not true, but I was surprised to hear the statement made. During what period were they earning \$5,000,000?

Commissioner ANDERSON. I am unable to state the figures as to the Pennsylvania. I looked at the figures for the 38 roads when I was examining the evidence in the Fifteen Per Cent Case, and I remember that these 38 roads, I think in the year ending June 30 last, paid close to \$125,000,000 dividends and put about a like amount in surplus. The roads have, during the five months, had a tremendous drop. There have been, of course, very unusual conditions that have arisen in the past three or four months. The commission was plainly required to consider the possibility of the necessity of imposing further rate increases in order to meet these most extraordinary war conditions—fuel conditions, material prices, etc, and so on, which were never dreamed of until this present war.

Senator UNDERWOOD. The statement then about the falling off of the earnings of the Pennsylvania Railroad is substantially correct?

Commissioner ANDERSON. I can neither verify it nor deny it as to the past four or five months, but I can get you the figures, if you desire them.

Senator UNDERWOOD. The status of the roads has changed according to your idea in the last two or three months?

Commissioner ANDERSON. Yes, sir; as to net earnings, tremendously.

Senator UNDERWOOD.—You think that is due to the war conditions and weather conditions—both?

Commissioner ANDERSON. Both.

Senator UNDERWOOD. These conditions do not in any way affect, however, the standard return that is provided for in this bill?

Commissioner ANDERSON. No, sir.

Senator KELLOGG. Do I understand you to say that in the last five months, since July, their operating expenses have increased enormously?

Commissioner ANDERSON. Since September.

Senator KELLOGG. Since September?

Commissioner ANDERSON. Yes, sir. They had already increased somewhat before that. I will have the figures up here if you think they are material.

Senator KELLOGG. And the net is going down very rapidly?

Commissioner ANDERSON. That is true.

Senator KELLOGG. That could not be met in any way except by an increase in rates?

Commissioner ANDERSON. I am not sure of that.

Senator KELLOGG. Do you know of any other way?

Commissioner ANDERSON. I am not sure. I hope and expect that the coordination going on under Federal control will, when we get thawed out, cut off a lot of expenses which have been overwhelming in proportion to what they should have been in moving a like amount of traffic.

Senator KELLOGG. Have you got the figures of the railroads for the last three months?

Commissioner ANDERSON. This is for the month of October. I have not got the November figures.

Senator KELLOGG. Can you give them for October, November, and December?

Commissioner ANDERSON. I can not get them for December yet. We can give them up to the end of October and some preliminary figures for November.

The CHAIRMAN. Are you speaking now of the eastern division?

Commissioner ANDERSON. Of all the large roads. The small roads come in later. You can get substantially complete figures about the 20th of the month.

The CHAIRMAN. Can you get them in convenient tables, showing the increases allowed? Can you show the increases that had been allowed aggregating something like several hundreds of millions of dollars.

Commissioner ANDERSON. There was \$100,000,000 allowed in the June decision of the commission in the eastern district.

The CHAIRMAN. Have you any tables in such form as to be available for the committee showing those increases and where they were allowed?

Commissioner ANDERSON. You could not tabulate that; it is a very complicated process. But I remember asking counsel for the Pennsylvania Railroad what the results were during the hearing and he stated, in substance, that they estimated in that the increases

granted amounted to about \$97,000,000 or \$100,000,000. (They became applicable at somewhat different dates along through the summer). That the proposed increase then under consideration amounted to about \$57,000,000. So that the increase granted last June was a little less than two-thirds of the amount thought to be involved in the 15-per-cent application. That name is really a misnomer. It is a convenient phrase applied to a rate increase supposed to give about 15 per cent advance on a large part of the freight traffic.

Senator CUMMINS. Inasmuch as it is proposed to relieve the railroads of all the effect of all conditions arising after June 30, wherein is it material?

Commissioner ANDERSON. I do not think it is material except in this particular: There has been an attempt to make the committee generally believe that the Government has treated the roads with a starvation diet, and that therefore there should be now some radical change in the Government's attitude toward the roads; that they are in the position of ill-treated children who have a right to have something done for them. I want the roads treated fairly, too. I have gone as far as any man in seeing that the dollar put into the public service is treated as fairly as the soldier or the man in the public service. I am stating these facts in order to prevent a misapprehension of the facts.

Senator KELLOGG. I did not intend to intimate that there has been no rate increases at all. I simply asked the witness if he understood the remedy had been to turn the railroads over to the Government. Unification is what you think would bring about a better operation and perhaps economies?

Commissioner ANDERSON. I think it would bring about better operation and perhaps economies, but I venture no judgment, and I venture no prophesy as to whether rate increases are or are not going to be found necessary or would or would not have been necessary if we had continued another three months under private control.

Senator KELLOGG. You can not prophesy whether unification will reduce the cost of operation?

Commissioner ANDERSON. I have a lively hope that it will. I think that is going to be the natural result.

Senator KELLOGG. You think the unification of the roads is going to make them more effective in moving traffic?

Commissioner ANDERSON. During this period of stress.

Senator KELLOGG. This unification was prevented by the laws of the States?

Commissioner ANDERSON. Yes, sir.

Senator KELLOGG. You think they should have been repealed?

Commissioner ANDERSON. I think the policy should have been changed 10 years ago.

Senator KELLOGG. That policy could have been changed without the Government taking over the railroads?

Commissioner ANDERSON. I considered it with great care for a month before I took any position as to whether it was safe to go through the winter without asking Congress, which would not be able to do anything until January, to change radically the railroad policy.

Senator KELLOGG. There was a congestion of traffic and rising costs during all of last winter, were there not?

Commissioner ANDERSON. Yes, sir, and I reported to a member of the Department of Justice that we were in critical danger.

Senator KELLOGG. And all last summer?

Commissioner ANDERSON. Yes, sir.

Senator KELLOGG. There was no suggestion made of permitting the railroads to operate as a unit, was there?

Commissioner ANDERSON. By whom?

Senator KELLOGG. By the Interstate Commerce Commission.

Commissioner ANDERSON. I do not know, sir. I was not a member until October, 1917.

Senator KELLOGG. That could have been accomplished by an act of Congress, permitting the railroads to operate as a unit during the war or permanently if Congress thought best to interchange equipment, to route freight over lines least congested, and, if necessary, that the Government should have an agent to enforce that operation!

Commissioner ANDERSON. Yes, sir. There might have been legislation passed the last year that I think would have tremendously benefited the country.

Senator KELLOGG. And then the rise of cost, if there were such, which made it more necessary to operate the railroads, could have been taken care of by reasonable increase of rates?

Commissioner ANDERSON. None have been demonstrated necessary beyond those that were granted up to September or October.

Senator KELLOGG. After September and October, that could have been taken care of?

Commissioner ANDERSON. Yes; that could have been done. That would have been quite a feasible policy. To your general line of questions I say "yes," as a very conceivable policy that might have been adopted a year ago.

Senator KELLOGG. In your opinion, would that not have been better than to take over all the railroads under Government operation?

Commissioner ANDERSON. I do not think I have any settled judgment on that point. I do not know how this experiment is coming out. The only thing I know is that when I saw the real situation, or thought I saw it about two months ago, I saw no alternative except for the Executive, and for the Interstate Commerce Commission, so far as it had advisory power, to act under the legislation which the Congress had enacted, and not wait until this critical winter war season to ask Congress to pass new legislation.

The CHAIRMAN. Mr. Anderson, it is a fact that we have taken the roads over?

Commissioner ANDERSON. Yes, sir.

The CHAIRMAN. And this committee is addressing itself to what we are going to do under an absolute fact and not a theory?

Commissioner ANDERSON. That is true.

The CHAIRMAN. We have 10 minutes before the hour for recess. Mr. Robinson, have you any other witness that you desire to examine?

Mr. ROBINSON. I have two witnesses yet. We have presented only two this morning.

The CHAIRMAN. We will hear your next witness.

Mr. THOM. Mr. Chairman, I desire to express regret that this matter which has now been interjected into this case has arisen. It does not seem to me that the committee of Congress is helped by bringing in a subject about which there is acute difference of opinion.

I have attempted to take up as little time of this committee, and of the committee of the House, as possible in presenting the case of these railroads. By "these railroads," I mean railroads of Class I, so far as we represent them. You will understand that our properties have been taken. We get no compensation until this bill is passed. There is no certainty as to what compensation will be offered us until this bill is passed. Therefore, outside of any concern that I have for conditions in the country at large, and my concern is very great in that matter, I have every inducement to hurry to a conclusion and not to impede the matter by unnecessary issues.

It is with that view that I have taken so little part in what has been going on. I want to get an early conclusion. I believe that that is necessary, not only for the railroads, but for the safety and security of the financial structure of this country.

I do not believe that a long period of uncertainty can be faced without the gravest apprehension as to what is going to occur, and therefore that every man who has concern for the future of the country and its success in this war must do what in him lies to hurry this matter to a final and definite conclusion.

As to this matter which has been introduced, and as to which there is an acute difference of opinion, if we were to meet that we would have to go into the trial of a rate case.

The CHAIRMAN. To what matter do you refer, Mr. Thom?

MR. THOM. I mean the matter which Mr. Commissioner Anderson has introduced in his remarks. We would have to go into the trial of a rate case. We would have to go into an investigation of the whole attitude of regulation toward these carriers. Now, I do not propose to do that, but I do propose to call the attention of this committee to the fact that, in my judgment, what has been said is not one of the issues before this committee and ought not to be permitted one way or the other, whichever view is correct, to sway it in its determination.

The main thing that you are interested in is to find out the value of the use of the properties you have taken over. We can have that determined without condemning or approving the previous policy of this Government in respect to the railroads. I want to have that taken as it is. I do not want to be led into any suggestion or criticism, nor to be led into any attitude of approval of matters that are not really before your committee.

I desire to keep the issue where I believe it properly should be, and that is for you gentlemen to ascertain the principles on which just compensation of these railroads should be determined, and therefore I want to express my regret that any other matter has been interpolated into the consideration of the case.

Commissioner ANDERSON. Mr. Chairman, you asked for certain figures. Do you care to have me give them?

Senator KELLOGG. So far as I am concerned, I do not care anything about the figures if the chairman does not want them in the record.

The CHAIRMAN. I would suggest that you just have them incorporated in the hearings for the convenience of the committee.

Commissioner ANDERSON. Do you want this whole report printed?

Senator KELLOGG. I do not think so.

Senator ROBINSON. What do they relate to?

Senator CUMMINS. Is that a showing for the month of September or October?

Commissioner ANDERSON. For the month of October and for the 10 months of that year compared with the 10 months of the previous years for all the big railroads and for the three districts.

Senator CUMMINS. They are interesting, Mr. Chairman, but I regard them as entirely immaterial.

Commissioner ANDERSON. So do I, but I would be glad to put them in the record if the committee cares for them.

Senator UNDERWOOD. Let them go into the record, Mr. Chairman.

The CHAIRMAN. If there is a difference of opinion, we will resolve the matter in favor of the committee having the figures. Therefore we will just allow them to go in.

Senator KELLOGG. They can be inserted in the record without reading them off.

The CHAIRMAN. They will be allowed to go into the record without being read.

(The table referred to is here printed in full, as follows:)

Compilations, subject to revision, from reports of revenues and expenses of steam roads in the United States for the month of October, 1917. (Cents omitted.) This summary covers only roads having operating revenues above \$1,000,000 for the year ended Dec. 31, 1916.

SUMMARY OF MONTHLY REPORTS OF LARGE ROADS FOR OCTOBER, 1917.

Item.	United States.			Eastern district.			Southern district.			Western district.		
	Amount.		Per mile of road operated.	Amount.		Per mile of road operated.	Amount.		Per mile of road operated.	Amount.		Per mile of road operated.
	1917	1916	1917 1916	1917 1916	1917 1916	1917 1916	1917 1916	1917 1916	1917 1916	1917 1916	1917 1916	1917 1916
Average number miles operated.....	231,183.48	230,840.50		58,982.62	59,109.68		42,861.96	42,678.49		129,338.90	129,052.33	
Revenues:												
Freight.....	270,297,894	245,629,725	1,169 1,064	117,559,879	104,466,168	1,993 1,767	40,665,560	35,589,515	949 834	112,072,425	105,574,102	867 818
Passenger.....	77,048,370	62,679,601	333 272	32,351,621	27,378,576	549 463	12,501,476	8,690,088	202 203	32,195,273	26,620,957	249 206
Mail.....	4,626,960	5,073,764	20 22	1,882,991	1,943,473	32 31	714,863	730,173	17 17	2,029,506	2,500,118	16 19
Express.....	9,199,117	8,170,282	40 35	4,304,555	3,830,098	73 65	1,137,915	1,055,819	26 25	3,756,647	3,284,365	29 26
All other transport-tation.....	9,793,094	9,490,622	43 41	5,148,026	5,215,228	87 88	861,991	785,505	20 18	3,785,077	3,491,889	29 27
Incidental.....	9,747,041	7,442,928	42 32	5,599,262	4,005,044	94 68	1,024,360	894,978	24 19	3,163,419	2,634,906	24 20
Joint facility—Cr.....	383,251	317,719	2 2	182,159	154,772	3 2	90,501	63,632	2 2	110,571	99,315	1 1
Joint facility—Dr.....	143,737	138,411	1 1	89,948	84,176	1 1	25,485	24,129	1 1	28,254	30,108	.....
Railway operating revenues.....	380,951,970	338,666,230	1,648 1,467	166,808,085	146,807,123	2,830 2,433	56,971,211	47,683,561	1,329 1,117	157,082,664	144,175,546	1,215 1,117
Expenses:												
Maintenance of way and structures.....	40,322,705	38,460,168	174 167	17,809,366	15,967,225	303 270	6,382,615	6,214,566	149 146	16,141,724	16,268,377	124 126
Maintenance of equipment.....	63,732,822	52,038,909	276 229	30,829,000	25,739,730	523 435	10,118,976	7,939,725	226 136	22,734,846	19,254,154	176 149
Traction.....	5,647,159	5,243,917	95 83	2,362,794	2,047,678	40 35	1,041,021	1,060,973	24 25	2,280,344	2,244,868	118 117
Miscellaneous operations.....	138,714,591	104,670,728	600 453	67,216,819	50,216,819	1,140 860	19,012,459	13,420,881	444 315	52,452,281	41,084,028	406 318
General.....	3,009,388	2,422,446	13 11	1,408,602	1,180,937	24 20	281,934	222,067	6 5	1,248,852	1,019,547	10 8
Transportation for investment—Cr.....	8,335,201	7,240,414	36 31	3,657,322	3,186,640	62 54	1,313,909	1,153,797	31 27	3,000,860	2,892,977	26 23
Investment—Cr.....	802,618	778,141	3 3	73,533	102,664	1 2	160,844	156,964	4 4	568,241	518,513	4 4

Operating revenues, expenses, and income of large roads as returned in 153 monthly reports of revenues, expenses, and railway investment.

[Returns are expected from 32 additional roads.]

FOR THE MONTH OF NOVEMBER.

Item.	United States.		Eastern district.		Southern district.		Western district.	
	1917	1916	1917	1916	1917	1916	1917	1916
Average number of miles operated.....	210,457.03	209,942.36	48,493.50	48,550.63	42,220.39	42,057.02	119,733.14	119,324.71
Railway operating revenues.....	\$319,434,287	\$289,605,416	\$128,786,300	\$114,659,836	\$54,587,351	\$47,226,205	\$138,060,646	\$127,799,375
Railway operating expenses.....	232,377,066	184,797,876	100,404,060	79,804,150	37,485,289	29,316,702	94,487,747	76,577,024
Net revenue from railway operations.....	87,057,201	104,807,540	28,382,240	34,855,686	17,102,062	17,919,503	43,572,899	52,122,351
Railway operating income.....	66,644,358	92,190,667	20,199,318	30,105,540	13,733,973	15,910,503	32,691,067	46,174,464
Revenues per mile.....	1,518	1,390	2,615	2,362	1,263	1,122	1,133	1,071
Expenses per mile.....	1,104	880	2,071	1,644	888	697	786	634
Net revenue per mile.....	414	500	544	718	405	426	344	437
Operating income per mile.....	317	439	417	620	326	376	273	387

FOR THE ELEVEN MONTHS ENDED WITH NOVEMBER.

Item.	United States.		Eastern district.		Southern district.		Western district.	
	1917	1916	1917	1916	1917	1916	1917	1916
Average number of miles operated.....	210,166.52	209,490.75	48,530.08	48,495.06	42,151.03	41,904.97	119,484.41	119,020.72
Railway operating revenues.....	\$3,329,694,659	\$2,971,454,072	\$1,371,034,861	\$1,239,345,549	\$549,881,650	\$472,450,389	\$1,409,778,148	\$1,256,058,134
Railway operating expenses.....	2,322,927,985	1,834,142,116	1,015,303,479	835,224,316	374,160,056	308,389,817	983,474,450	790,527,983
Net revenue from railway operations.....	1,006,766,674	1,037,311,956	355,731,382	404,121,233	174,731,594	164,060,572	479,303,698	469,130,151
Railway operating income.....	825,504,496	904,823,627	294,385,546	354,076,629	143,479,543	143,697,108	387,636,409	407,050,890
Revenues per mile.....	15,843	14,186	28,251	25,556	13,022	11,253	11,799	10,884
Expenses per mile.....	11,063	9,753	20,921	8,877	8,877	7,349	7,613	6,643
Net revenue per mile.....	4,790	4,952	7,330	8,233	4,145	3,909	3,986	3,942
Operating income per mile.....	3,928	4,319	6,066	7,301	3,404	3,424	3,244	3,120

Mr. ROBINSON. Mr. Chairman, I will introduce as a witness Mr. J. C. Bailey, representing the owners of the Colorado Midland.

The CHAIRMAN. The hour for recess having arrived, we will hear the witness immediately at 2 o'clock.

(Thereupon, at 12 o'clock p. m. the committee took a recess until 2 o'clock p. m. on the same day.)

AFTER RECESS.

The CHAIRMAN. The committee will come to order. Mr. Robinson, you had a witness?

Mr. ROBINSON. Mr. J. C. Bailey, of the Colorado Midland.

STATEMENT OF MR. J. C. BAILEY, OF COLORADO SPRINGS, COLO., ASSISTANT TO THE PRESIDENT OF THE COLORADO MIDLAND RAILROAD.

The CHAIRMAN. Mr. Bailey, give your name and address, and your official connection with your road.

Mr. BAILEY. J. C. Bailey, Colorado Springs, assistant to the president of the Colorado Midland Railroad, a line of 300 miles, with terminals at Colorado Springs, Grand Junction, and Leadville, serving an agricultural, mining, and stock-raising community.

Mr. Chairman and gentlemen of the committee, if you will allow me I will attempt to present briefly some facts as I believe them to exist, which are of vital concern to the railroad which I represent. We feel that in framing a measure under which the railroads of the United States will be operated these facts are pertinent and should be submitted for your consideration.

First. To exclude the short lines under which the Colorado Midland is classified will result in a loss of through business upon which it is largely dependent, to a competitive trunk line traversing the same territory, and will mean a tremendous decrease in revenue.

Second. Increased labor costs that will be forced upon such lines to meet the increase granted by greater lines under Government control.

Third. In the case of the Midland, an increased deficit of \$25,000 monthly instead of at present a deficit of \$10,000 for operating expenses. This total monthly deficit comprises an increased supply cost of \$5,000, labor \$8,000, and fuel \$12,000. This is exclusive of any allowance for investment in the property.

Every railroad in the United States in recent years has been confronted with a steady increase in the cost of labor and supplies, particularly fuel, failing to receive an increase in rates sufficient to offset this condition. The Government, I believe, to avoid bankruptcy for the greater lines proposes to guarantee earnings based on operating expenses for the three years past, which were much lower than at present.

This is a matter of necessity and justice, as we view it, to these carriers; it is equally a matter of necessity and justice that 950 lesser lines be afforded the same measure of protection which it is now proposed to extend to the 181 trunk lines serving the country. Otherwise a large proportion of these weaker lines will be unable to earn operating costs, and bankrupt owners will not be able to throw sufficient financial power into the breach to continue operations or

Mr. BAILEY. That would include and cover new equipment, new rails.

Senator CUMMINS. That takes up the present indebtedness, though?

Mr. ROBINSON. They have bought it and seem to own it.

Mr. BAILEY. There is no present indebtedness.

Mr. ROBINSON. How much did they pay for it at the master's sale?

Mr. BAILEY. About \$2,000,000.

Mr. ROBINSON. The issue of bonds that you suggest is to take care of that purchase?

Mr. BAILEY. Yes; and rehabilitate the property.

Mr. ROBINSON. And to put a million dollars more into the property?

Mr. BAILEY. Yes.

Mr. ROBINSON. Besides what you get from stock?

Mr. BAILEY. That is correct.

Mr. ROBINSON. That is all.

Mr. Chairman, I will introduce Mr. R. C. Hobbs, of the Kansas City & Memphis Railway, in northwestern Arkansas.

STATEMENT OF MR. R. C. HOBBS, GENERAL MANAGER FOR THE RECEIVERS, KANSAS CITY & MEMPHIS RAILWAY CO., ROGERS, ARK.

The ACTING CHAIRMAN. Mr. Hobbs, give your name and address and railroads you represent to the stenographer, please.

Mr. HOBBS. R. C. Hobbs, general manager for the Receivers, Kansas City & Memphis Railway Co., Rogers, Ark.

The ACTING CHAIRMAN. You may now make the statement that you desire to make.

Mr. HOBBS. We have a little railroad that is located in northwest Arkansas. Our whole line is located in that State, and it is peculiarly situated. We operate 68 miles, and a portion of our line goes through a very thickly settled farming and agricultural country, which is the western and southern portion of our line, and the eastern portion is going through an undeveloped timber country.

These orders of Mr. McAdoo, his orders No. 1 and No. 2, have taken away from us practically 75 per cent of our business. We were getting in approximately enough carload business to take care of our outbound tonnage, and therefore we were not suffering greatly upon our line from the fact that we were not getting in equipment although we did suffer to a great extent.

On the west we connected with the Kansas City Southern Railroad, which runs from Kansas City, Mo., directly south to the Gulf, and on the east we connect with the Frisco Railroad at two different points.

I have compiled here a statement of all the tonnage we handled the last past year which speaks for itself as to the amount of tonnage we handled, and it shows its originating point and its destination. I do not know whether this committee would like to see it or not, but if they do, I have the figures, the cars, and the commodities.

The ACTING CHAIRMAN. If you desire, you can put it in the record to supplement your statement.

(The statements referred to are here printed in full as follows:)

*Cars received from Kansas City Southern during year 1917.***Autos:**

Joliet, Ill., to Fayetteville.....	3
St. Louis, Mo., to Fayetteville.....	10
Kansas City, Mo., to Fayetteville.....	10
Joliet, Ill., to Rogers.....	3
Kansas City, Mo., to Rogers.....	6
St. Louis, Mo., to Rogers.....	8
Flint, Mich., to Fayetteville.....	1
Memphis, Tenn., to Fayetteville.....	1
Total.....	42

Ammunition:

St. Louis, Mo., to Rogers.....	1
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Apples:

Gentry, Ark., to Rogers.....	1
Gentry, Ark., to Fayetteville.....	1
Total.....	2

Beans:

Joplin, Mo., to Rogers.....	1
San Francisco, Cal., to Fayetteville.....	1
St. Louis, Mo., to Rogers.....	1
Total.....	3

Beverages:

St. Paul, Minn., to Fayetteville.....	3
Peoria, Ill., to Fayetteville.....	3
Kansas City, Mo., to Fayetteville.....	1
Total.....	7

Blue vitriol:

St. Louis, Mo., to Rogers.....	1
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Brick:

Fort Smith, Ark., to Rogers.....	13
Fort Smith, Ark., to Litteral.....	1
Total.....	14

Bale ties:

Peoria, Ill., to Rogers.....	3
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Berry packages:

Longview, Tex., to Tontitown.....	1
Longview, Tex., to Steele.....	1
Total.....	2

Baggage:

Fort Smith, Ark., to Fayetteville.....	1
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Boxes:

Fort Smith, Ark., to Fayetteville.....	1
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Barrels:

Chesterfield to Rogers.....	2
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Bags:

Chicago, Ill., to Rogers.....	1
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656 GOVERNMENT CONTROL AND OPERATION OF RAILROADS.

Flour—Continued.

Arkansas City, Kans., to Fayetteville.....	2
Kingman, Kans., to Rogers.....	1
Kansas City, Kans., to Fayetteville.....	1
Caldwell, Kans., to Fayetteville.....	2
Neosho, Mo., to Fayetteville.....	6
Newton, Kans., to Rogers.....	3
Pittsburg, Kans., to Fayetteville.....	1
Kansas City, Mo., to Tontitown.....	1
Pittsburg, Kans., to Highfill.....	1
Total.....	35

Fencing:

Peoria, Ill., to Fayetteville.....	1
Peoria, Ill., to Rogers.....	2
Sterling, Ill., to Rogers.....	1
Total.....	4

Fertilizer:

St. Louis, Mo., to Rogers.....	1
Kansas City, Mo., to Rogers.....	2
Memphis, Tenn., to Litteral.....	1
Total.....	4

Freight packages:

Beaumont, Tex., to Highfill.....	1
Longview, Tex., to Steele.....	1
Total.....	2

Fixtures:

Longview, Tex., to Cave Springs.....	1
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Fruit jars:

Kansas City, Kans., to Rogers.....	1
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Hay:

Miami, Okla., to Springtown.....	1
Hume, Mo., to Springtown.....	2
Richards, Mo., to Springtown.....	1
Miami, Okla., to Cave.....	2
Stokesbury, Mo., to Highfill.....	1
Eve, Mo., to Fayetteville.....	4
Farlan, Mo., to Rogers.....	1
Miami, Okla., to Highfill.....	1
Kansas City, Kans., to Cave Springs.....	2
Kansas City, Mo., to Elm Springs.....	2
Miami, Okla., to Fayetteville.....	2
Cleora, Okla., to Rogers.....	1
Locust Grove, Okla., to Fayetteville.....	7
Total.....	27

Horseshoes:

St. Louis to Rogers.....	3
Grand Island, N. Y., to Rogers.....	1
Total.....	4

Hardware:

Kansas City to Rogers.....	1
St. Louis to Rogers.....	2
Total.....	3

Hominy:

St. Louis, Mo., to Fayetteville.....	1
St. Louis, Mo., to Rogers.....	1
Total.....	<u>2</u>

Hoops:

Alexandria, La., to Rogers.....	1
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Implements:

St. Louis, Mo., to Fayetteville.....	1
St. Louis, Mo., to Rogers.....	4
Deering, Ill., to Rogers.....	2
Chicago, Ill., to Rogers.....	11
Bloomington, Ill., to Rogers.....	1
Springfield, Mo., to Fayetteville.....	1
Hutchinson, Kans., to Rogers.....	1
Kansas City, Mo., to Rogers.....	1
Kansas City, Mo., to Fayetteville.....	2
Total.....	<u>24</u>

Iron:

Howard, Mo., to Rogers.....	1
St. Louis, Mo., to Rogers.....	1
Total.....	<u>2</u>

Junk:

St. Louis, Mo., to Rogers.....	1
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Lumber:

Malvern, Ark., to Rogers.....	4
Ballard to Fayetteville.....	1
Decard, Mo., to Fayetteville.....	1
De Queen, Ark., to Fayetteville.....	3
Becker, Ark., to Elm.....	3
St. Louis, Mo., to Rogers.....	1
Lufkin, Tex., to Rogers.....	1
Total.....	<u>14</u>

Limestone:

Watts, Okla., to Highfill.....	1
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Lard:

Houston, Tex., to Rogers.....	3
Gretna, La., to Fayetteville.....	2
Total.....	<u>5</u>

Live stock:

Kansas City to Cave.....	2
Kansas City to Fayetteville.....	2
Kansas City to Highfill.....	1
Joplin, Mo., to Fayetteville.....	8
Total.....	<u>13</u>

Lead:

Kansas City to Rogers.....	1
Chicago to Rogers.....	1
Total.....	<u>2</u>

660 GOVERNMENT CONTROL AND OPERATION OF RAILROADS.

Sand:	
Fort Smith to Rogers.....	16
Fort Smith to Fayetteville.....	3
Total.....	19
Sash doors:	
St. Louis to Rogers.....	2
Sawmills:	
Anderson, Mo., to Monte, Nebr.....	1
Steel:	
Kansas City to Rogers.....	2
Shingles:	
Granite Falls, Wash., to Fayetteville.....	1
Harding, Wash., to Rogers.....	1
Everett, Wash., to Cave.....	1
Aberdeen, Wash., to Rogers.....	1
Ballard, Wash., to Elm.....	1
Total.....	5
Soda:	
Memphis, Tenn., to Fayetteville.....	1
Kansas City to Fayetteville.....	1
Total.....	2
Sewer pipe:	
Pittsburg, Kans., to Fayetteville.....	2
Stoves:	
Metropolis, Ill., to Rogers.....	3
St. Louis, Mo., to Rogers.....	1
Total.....	4
Tile:	
Pittsburg, Kans., to Fayetteville.....	1
Twine:	
Deering, Ill., to Rogers.....	1
Vehicles:	
West Pullman, Ill., to Fayetteville.....	1
West Pullman, Ill., to Rogers.....	3
St. Louis, Mo., to Rogers.....	5
Springfield, Mo., to Fayetteville.....	2
Pittsburg, Kans., to Rogers.....	1
Gresham, Ill., to Rogers.....	1
Total.....	13
Wheels:	
Pittsburg, Kans., to Rogers.....	1
Wire:	
Joliet, Ill., to Elm Springs.....	1
Memphis, Tenn., to Rogers.....	2
St. Louis, to Rogers.....	5
Peoria to Rogers.....	1
Sterling, Ill., to Rogers.....	1
Bloomington, Ill., to Rogers.....	1
Total.....	11

Recapitulation.

Autos.....	42	Salt.....	12
Ammunition.....	1	Sweat pads.....	2
Apples.....	2	Spuds.....	9
Beans.....	3	Sugar.....	32
Beverage.....	7	Soap.....	10
Blue vitriol.....	1	Sulphur solution.....	2
Brick.....	14	Sulphur.....	3
Bale ties.....	3	Screen doors.....	1
Berry packages.....	1	Sand.....	19
Baggage.....	2	Sash and doors.....	2
Boxes.....	1	Sawmill.....	1
Barrels.....	1	Steel.....	2
Bags.....	1	Shingles.....	5
Corn.....	12	Soda.....	2
Coal.....	60	Sewer pipe.....	2
Cans.....	4	Stoves.....	4
Cement.....	20	Tile.....	1
Canned goods.....	6	Twine.....	1
Cottonseed meal.....	7	Vehicles.....	13
Columns.....	1	Wheels.....	1
Emigrant outfit.....	5	Wire.....	11
Furniture.....	10		
Feed.....	107	Total.....	724
Flour.....	35		==
Fencing.....	4	Merchandise cars:	
Fertilizer.....	4	January.....	6
Freight packages.....	2	February.....	5
Fixtures.....	1	March.....	7
Fruit jars.....	1	April.....	7
Hay.....	27	May.....	6
Horseshoes.....	4	June.....	5
Hardware.....	3	July.....	4
Hoops.....	1	September.....	3
Hominy.....	2		
Implements.....	24	Total merchandise.....	43
Iron.....	2	Total number of carloads.....	724
Junk.....	1		
Lumber.....	14	Grand total.....	767
Limestone.....	1		==
Lard.....	5	Cars switched:	
Live stock.....	13	Feed.....	24
Cream separators.....	1	Coal.....	19
Lead.....	2	Oil.....	13
Logs.....	3	Flour.....	7
Manure.....	31	Household goods.....	1
Machinery.....	3	Hay.....	1
Milk.....	4	Machinery.....	1
Nails.....	3	Boilers.....	1
Oil.....	66	Brick.....	9
Plows.....	1	Chatt.....	3
Paper.....	5	Sand.....	1
Rods.....	1	Grits.....	6
Rice.....	2	Fertilizer.....	1
Rye.....	1		
Sirup.....	11	Total.....	87

Cars delivered to Kansas City Southern during year 1917.

Evaporated apples:

Fayetteville to Beaumont, Tex.....	2
Fayetteville to Memphis, Tenn.....	7
Fayetteville to Paris, Ark.....	1
Fayetteville to Dallas, Tex.....	3
Fayetteville to Waco, Tex.....	1
Fayetteville to Anniston, Ala.....	1

662 GOVERNMENT CONTROL AND OPERATION OF RAILROADS.

Evaporated apples—Continued.

Fayetteville to Kansas City, Mo.....	1
Fayetteville to St. Louis, Mo.....	1
Fayetteville to Fort Smith, Ark.....	2
Fayetteville to Texarkana, Ark.....	1
Fayetteville to Birmingham, Ala.....	5
Fayetteville to New Orleans, La.....	1
Fayetteville to Meridian, Miss.....	1
Fayetteville to Winnipeg, Manitoba.....	1
Fayetteville to Chicago, Ill.....	2
Fayetteville to Green Bay, Wis.....	1
Highfill to St. Louis, Mo.....	7
Rogers to St. Louis, Mo.....	2
Litteral to Hartshorn, Okla.....	1
Cave Springs to St. Louis, Mo.....	2
Tontitown to St. Louis, Mo.....	1
Elm Springs to St. Louis, Mo.....	3
Springtown to St. Louis, Mo.....	2
Total.....	49

Apple waste:

Rogers to St. Louis, Mo.....	2
Tontitown to St. Louis, Mo.....	3
Tontitown to Chicago, Ill.....	1
Litteral to Elwood, Ind.....	1
Highfill to St. Louis, Mo.....	2
Elm Springs to St. Louis, Mo.....	3
Mount Comfort to Rochester, N. Y.....	2
Cave Springs to St. Louis, Mo.....	1
Elm Springs to Chicago, Ill.....	1
Total.....	16

Empty carriers:

Fayetteville to Peoria, Ill.....	1
Fayetteville to St. Paul, Minn.....	1
Total.....	2

Canned goods:

Litteral to Kansas City, Mo.....	15
Litteral to Clinton, Okla.....	1
Litteral to St. Louis, Mo.....	6
Litteral to Elwood, Ind.....	1
Litteral to Shreveport, La.....	1
Litteral to Tulsa, Okla.....	1
Litteral to Salina, Kans.....	1
Litteral to Des Moines, Iowa.....	1
Litteral to Fort Smith, Ark.....	1
Litteral to Oklahoma City, Okla.....	1
Mount Comfort to Muskogee, Okla.....	3
Tontitown to Kansas City.....	3
Tontitown to Hattiesburg, Miss.....	1
Tontitown to Dallas, Tex.....	2
Tontitown to St. Joseph, Mo.....	1
Tontitown to Tulsa, Okla.....	2
Tontitown to Salina, Kans.....	1
Tontitown to Fort Smith, Ark.....	1
Springtown to Pittsburgh, Pa.....	2
Cave Springs, to McAlester, Okla.....	1
Cave Springs to Joplin, Mo.....	2
Cave Springs to Sioux City, Iowa.....	1
Cave Springs to Fort Smith, Ark.....	1
Cave Springs to Kansas City, Mo.....	1
Fayetteville to Emporia, Kans.....	1
Fayetteville to Columbus, Nebr.....	1

Canned goods—Continued.

Fayetteville to Elk City, Kans.....	1
Fayetteville to Muskogee, Okla.....	1
Fayetteville to Winnfield, Kans.....	1
Fayetteville to Parsons, Kans.....	1
Fayetteville to Hutchinson, Kans.....	1
Fayetteville to Kansas City, Mo.....	1
Fayetteville to Sayer, Okla.....	1
Fayetteville to Greenville, Tex.....	1
Fayetteville to Greenville, Tex.....	1
Fayetteville to El Reno, Okla.....	1
Fayetteville to Alexandria, La.....	1
Fayetteville to Lincoln, Nebr.....	1
Total.....	<u>64</u>

Corn:

Rogers to Gainesville, Tex.....	1
Rogers to Byars, Okla.....	1
Rogers to Cleburn, Tex.....	1
Rogers to Waxahachie, Tex.....	1
Rogers to Ardmore, Okla.....	2
Rogers to Hallettsville, Tex.....	2
Rogers to Tulsa, Okla.....	1
Rogers to Texarkana, Ark.....	2
Rogers to Mount Pleasant, Tex.....	2
Rogers to Shiner, Tex.....	1
Rogers to Bishop, Tex.....	1
Rogers to Leander, Tex.....	1
Narrows to Sweetwater, Tex.....	1
Cave Springs to Fort Worth, Tex.....	1
Cave Springs to Mundy, Tex.....	1
Cave Springs to Mount Pleasant, Tex.....	1
Highfill to Abilene, Tex.....	1
Highfill to Bomarton, Tex.....	1
Highfill to Fort Worth, Tex.....	1
Total.....	<u>23</u>

Frill rig:

Rogers to Joplin, Mo.....	1
Fayetteville to Lincolnville, Okla.....	1
Total.....	<u>2</u>

Emigrant movables:

Rogers to Milwaukee, Wis.....	1
Rogers to St. Joseph, Mo.....	1
Rogers to Kansas City, Mo.....	2
Rogers to Joplin, Mo.....	2
Rogers to Erie, Kans.....	1
Rogers to Oklahoma City, Okla.....	1
Rogers to Tulsa, Okla.....	1
Rogers to Lake Andes, S. Dak.....	1
Rogers to Butler, Mo.....	1
Rogers to Anderson, Ind.....	1
Rogers to Pratt City, Okla.....	1
Cave Springs to Rolla, Mo.....	2
Cave Springs to Barthoud, Colo.....	1
Cave Springs to Poplar, Mont.....	1
Cave Springs to Watts, Okla.....	1
Felker to Chanute, Kans.....	1
Fayetteville to Larned, Kans.....	1
Total.....	<u>20</u>

664 GOVERNMENT CONTROL AND OPERATION OF RAILROADS.

Eggs:

Fayetteville to Chicago, Ill.....	4
Fayetteville to Dallas, Tex.....	1
Total.....	5

Dried fruit:

Fayetteville to Texarkana, Ark.....	1
Fayetteville to Memphis, Tenn.....	1
Fayetteville to Pueblo, Colo.....	1
Total.....	3

Hoops:

Rogers, Ark., to Watts, Okla.....	1
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Hay:

Rogers to Yorktown, Tex.....	1
Rogers to Waxahachie, Tex.....	1
Rogers to Dallas, Tex.....	2
Rogers to New Ulm, Tex.....	1
Total.....	5

Scrap iron:

Rogers to Fort Smith, Ark.....	2
Rogers to Joplin, Mo.....	1
Cave Springs to Joplin, Mo.....	1
Fayetteville to St. Louis, Mo.....	3
Total.....	7

Junk:

Fayetteville to Fort Smith, Ark.....	1
Springtown to Joplin, Mo.....	1
Rogers to Joplin, Mo.....	1
Rogers to Fort Smith, Ark.....	3
Highfill to Joplin, Mo.....	2
Litteral to Joplin, Mo.....	1
Healing Springs to Joplin, Mo.....	1
Total.....	10

Lumber:

Fayetteville to Anthony, Kans.....	1
Rogers to Tulsa, Okla.....	1
Narrows to Albuquerque, N. Mex.....	2
Narrows to Joplin, Mo.....	2
Springtown to Joplin, Mo.....	1
Narrows to Omaha, Nebr.....	1
Total.....	8

Live stock:

Rogers to Kansas City, Mo.....	25
Fayetteville to Oklahoma City, Okla.....	1
Highfill to Joplin, Mo.....	1
Highfill to Pittsburg, Kans.....	2
Highfill to Kansas City, Mo.....	1
Rogers to Pittsburg, Kans.....	3
Rogers to Mexico, Mo.....	3
Rogers to Waxahachie, Tex.....	3
Cave Springs to Pittsburg, Kans.....	2
Cave Springs to Kansas City, Mo.....	5
Healing Springs to Kansas City, Mo.....	3
Healing Springs to Joplin, Mo.....	1
Fayetteville to Joplin, Mo.....	1

Live stock—Continued.

Fayetteville to Bartlesville, Okla.....	1
Fayetteville to Little Rock, Ark.....	10
Fayetteville to Chickamauga, Ga.....	3
Fayetteville to Dewey, Okla.....	1
Fayetteville to Fort Sill, Okla.....	10

Total.....	76
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Machinery:

Rogers to Watts, Okla.....	1
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Nuts:

Rogers to Omaha, Nebr.....	1
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Oats:

Rogers to Memphis, Tenn.....	3
Cave Springs to Kansas City, Mo.....	1
Rogers to Sherman, Tex.....	1
Cave Springs to Fort Worth, Tex.....	1

Total.....	6
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Oil:

Fayetteville to Kansas City Southern.....	1
Returned on their request.....	

Paper:

Rogers to Kansas City, Mo.....	1
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Peaches:

Fayetteville to Chicago, Ill.....	1
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Wire:

Fayetteville to De Kalb, Ill.....	1
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Wheat:

Healing Springs to Kansas City.....	1
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Stone:

Fayetteville to St. Paul, Minn.....	1
Fayetteville to Hancock, Wis.....	1

Total.....	2
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Staves:

Rogers to Stillwell, Okla.....	1
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Spokes:

Fayetteville to Huntington, Ind.....	1
Fayetteville to Fort Smith, Ark.....	1

Total.....	2
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Spuds:

Rogers to Joplin, Mo.....	1
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Tanks:

Rogers to Tulsa, Okla.....	1
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Ties:

Litteral to Kansas City, Mo.....	4
Litteral to Omaha, Nebr.....	1
Litteral to Topeka, Kans.....	4
Litteral to Lincoln, Nebr.....	2
Litteral to Brookfield, Mo.....	9
Litteral to Galesburg, Ill.....	1
Springtown to Brookfield, Mo.....	1
Springtown to Galesburg, Ill.....	1
Springtown to Atchison, Kans.....	2
Springtown to Omaha, Nebr.....	9
Springtown to Kansas City, Mo.....	1
Springtown to Bonner Springs, Kans.....	5

Ties—Continued.

Rogers to Bonner Springs, Kans.....	4
Rogers to Kansas City, Mo.....	2
Rogers to Omaha, Nebr.....	3
Rogers to Milwaukee, Wis.....	1
Rogers to Pittsburg, Kans.....	1
Healing Springs to Brookfield, Mo.....	1
Narrows to Laredo, Mo.....	8
Narrows to Fuller, Kans.....	1
Narrows to Joplin, Mo.....	5
Narrows to Brookfield, Mo.....	77
Narrows to Galesburg, Ill.....	2
Narrows to Colorado City, Colo.....	15
Narrows to Utah Junction, Colo.....	10
Total.....	170

Mine ties:

Springtown to Pittsburg, Kans.....	1
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Mine props:

Tontitown to Pittsburg, Kans.....	2
Elm Springs to Pittsburg, Kans.....	8
Litteral to Pittsburg, Kans.....	16
Springtown to Pittsburg, Kans.....	9
Cave Springs to Pittsburg, Kans.....	1
Litteral to Fuller, Kans.....	3
Narrows to Pittsburg, Kans.....	5
Healing Springs to Pittsburg, Kans.....	1
Total.....	45

Vehicle, wood:

Fayetteville to Kansas City, Mo.....	6
Fayetteville to Burlington, Iowa.....	1
Fayetteville to El Paso, Tex.....	1
Fayetteville to Los Angeles, Cal.....	1
Fayetteville to Texarkana, Tex.....	1
Fayetteville to Clarksville, Tex.....	1
Fayetteville to St. Joseph, Mo.....	1
Total.....	12

Wheels:

Rogers to Pittsburg.....	1
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Apples:

Rogers to Abilene Kans.....	1
Rogers to Ardmore, Okla.....	3
Rogers to Brookings, S. Dak.....	1
Rogers to Hammon, Okla.....	2
Rogers to Pittsburg, Kans.....	1
Rogers to Ft. Worth, Tex.....	5
Rogers to New Orleans, La.....	10
Rogers to Eldorado, Ark.....	4
Rogers to Menno, S. Dak.....	1
Rogers to Houston, Tex.....	1
Rogers to Dalhart, Tex.....	1
Rogers to Moulton, Iowa.....	1
Rogers to Lincolnville, Kans.....	1
Rogers to Spearville, Kans.....	1
Rogers to Kansas City, Mo.....	2
Rogers to Holdenville, Okla.....	1
Rogers to Natchez, Miss.....	7
Rogers to Tulsa, Okla.....	4
Rogers to Burdick, Kans.....	1
Rogers to Bonham, Tex.....	1

Apples—Continued.

Rogers to Paris, Tex.	1
Rogers to Camden, Ark.	1
Rogers to Houston, Tex.	3
Rogers to Lincolnville, Tex.	1
Rogers to Louisville, Ky.	1
Rogers to Claremore, Okla.	1
Rogers to Wellington, Tex.	1
Rogers to Savonburg, Kans.	1
Rogers to Victoria, Tex.	1
Rogers to Little Rock, Ark.	1
Rogers to Russellville, Ark.	1
Rogers to Denton, Tex.	1
Rogers to Hillsboro, Tex.	1
Rogers to Fort Smith, Ark.	1
Rogers to Shattuck, Okla.	1
Rogers to Alastyne, Tex.	1
Rogers to Pittsburgh, Pa.	1
Rogers to Sentinel, Okla.	1
Rogers to Hinton, Okla.	1

Total	70
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Cave Springs to Texarkana, Ark.	13
Cave Springs to San Antonio, Tex.	3
Cave Springs to Claremore, Okla.	1
Cave Springs to Gainesville, Tex.	3
Cave Springs to Herrington, Kans.	1
Cave Springs to Weatherford, Tex.	2
Cave Springs to Sherman, Tex.	1
Cave Springs to Wichita Falls, Tex.	1
Cave Springs to Childress, Tex.	3
Cave Springs to Elk City, Kans.	1
Cave Springs to Bronson, Kans.	1
Cave Springs to Lindsborg, Kans.	1
Cave Springs to Tyro, Kans.	1
Cave Springs to Howe, Tex.	1
Cave Springs to Whitesborough, Tex.	1
Cave Springs to Ashdown, Ark.	1
Cave Springs to Milwaukee, Wis.	1
Cave Springs to Dallas, Tex.	1
Cave Springs to Kansas City, Mo.	1
Cave Springs to Shreveport, La.	1
Cave Springs to Chicago, Ill.	1
Cave Springs to Neodesha, Kans.	1

Total	41
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Healing Springs to Genesho, Kans.	1
Healing Springs to Muskogee, Okla.	5
Healing Springs to Henryetta, Okla.	1
Healing Springs to Houston, Tex.	2
Healing Springs to Temple, Tex.	1
Healing Springs to Shreveport, La.	2
Healing Springs to Memphis, Tenn.	1
Healing Springs to Kansas City, Mo.	1
Healing Springs to Mineola, Tex.	1
Healing Springs to New Orleans, La.	1

Total	16
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Highfill to Fort Worth, Tex.	1
Highfill to Lone Oak, Tex.	1
Highfill to Waco, Tex.	5
Highfill to Houston, Tex.	1
Highfill to Wellington, Kans.	1
Highfill to San Antonio, Tex.	3

Apples—Continued.

Highfill to Tyler, Tex.....	1
Highfill to Pittsburgh, Pa.....	1
Highfill to Bronson, Kans.....	1

Total.....	15
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Springtown to San Antonio, Tex.....	1
Springtown to Fort Worth, Tex.....	1
Springtown to New Orleans, La.....	3
Springtown to Towanda, Kans.....	1

Total.....	6
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Elm Springs to Farmersville, Tex.....	1
Elm Springs to Gatesville, Tex.....	1
Elm Springs to Eureka, Kans.....	1
Elm Springs to Cuero, Tex.....	1
Elm Springs to Eureka, Kans.....	1
Elm Springs to Hoisington, Kans.....	1
Elm Springs to McKinney, Tex.....	1
Elm Springs to Sherman, Tex.....	2
Elm Springs to New Orleans, La.....	2
Elm Springs to Pittsburgh, Pa.....	1
Elm Springs to Palestine, Tex.....	1
Elm Springs to Dallas, Tex.....	1
Elm Springs to El Campo, Tex.....	3
Elm Springs to Fort Worth, Tex.....	4
Elm Springs to San Angelo, Tex.....	1
Elm Springs to Tyler, Tex.....	11
Elm Springs to Rich Hill, Mo.....	1
Elm Springs to St. Jo, Tex.....	1
Elm Springs to Lone Oak, Tex.....	1
Elm Springs to Rosebud, Tex.....	1
Elm Springs to Goree, Tex.....	1
Elm Springs to Neodesha, Kans.....	1
Elm Springs to Marcos, Tex.....	1
Elm Springs to St. Louis, Mo.....	1
Elm Springs to Larned, Kans.....	1
Elm Springs to Richmond, Mo.....	1

Total.....	33
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Tontitown to Waco, Tex.....	1
Tontitown to Fort Smith, Ark.....	9
Tontitown to Camden, Ark.....	1
Tontitown to Clarendon, Ark.....	1
Tontitown to Tulsa, Okla.....	1
Tontitown to Severy, Kans.....	1
Tontitown to Lake Park, Iowa.....	1
Tontitown to Altamont, Kans.....	1
Tontitown to Wichita Falls, Tex.....	1
Tontitown to Saline, Kans.....	3
Tontitown to Manhattan, Kans.....	6
Tontitown to Marlin, Tex.....	2
Tontitown to Sherman, Tex.....	4
Tontitown to Henryetta, Okla.....	1
Tontitown to Caney, Kans.....	1
Tontitown to Kansas City, Mo.....	1
Tontitown to Gatesville, Tex.....	1
Tontitown to Mexia, Tex.....	1
Tontitown to Austin, Tex.....	1
Tontitown to Tyler, Tex.....	2
Tontitown to Dallas, Tex.....	1
Tontitown to Hamilton, Tex.....	1
Tontitown to Apache, Okla.....	1

Total.....	43
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Apples—Continued.

Hazlewood to Wichita, Kans.....	1
Hazlewood to Wellington, Kans.....	1

Total.....	2
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Fayetteville to Kansas City, Mo.....	1
Fayetteville to Shreveport, La.....	1
Fayetteville to Denison, Tex.....	1
Fayetteville to Fort Worth, Tex.....	1
Fayetteville to Austin, Tex.....	1

Total.....	5
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Litteral to Lucas, Kans.....	1
Litteral to Ellis, Kans.....	2
Litteral to Kansas City, Mo.....	1
Litteral to Ashland, Ky.....	1
Litteral to Fort Worth, Tex.....	1
Litteral to Paris, Tex.....	1
Litteral to Dallas, Tex.....	2
Litteral to Hartshorn, Okla.....	1

Total.....	10
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Mount Comfort to Joplin, Mo.....	1
Dowel Spur to Texarkana, Ark.....	11

Felker to Rich Hill, Mo.....	1
Felker to Larned, Kans.....	1
Felker to Joplin, Mo.....	1

Total.....	3
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Steele to Sherman, Tex.....	1
Steele to Okmulgee, Okla.....	1
Steele to Ada, Okla.....	1

Total.....	3
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Total apples:

From Rogers.....	70
From Cave Springs.....	41
From Healing Springs.....	16
From Highfill.....	15
From Springtown.....	6
From Elm Springs.....	33
From Tontitown.....	43
From Litteral.....	10
From Hazlewood.....	2
From Fayetteville.....	5
From Mount Comfort.....	1
From Dowel Spur.....	1
From Felker.....	3
From Steele.....	3

Total.....	249
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Grapes:

Tontitown to Oklahoma City, Okla.....	1
Tontitown to Topeka, Kans.....	1
Tontitown to Kansas City.....	1
Tontitown to Sioux City, Iowa.....	1
Tontitown to Lincoln, Nebr.....	1
Tontitown to Hastings, Nebr.....	1

Total.....	6
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670 GOVERNMENT CONTROL AND OPERATION OF RAILROADS.

Strawberries:

Cave Springs to Kansas City, Mo.....	5
Cave Springs to Sioux City, Iowa.....	1
Cave Springs to Detroit, Mich.....	1
Highfill to Pittsburgh, Pa.....	1
Highfill to Kansas City, Mo.....	8
Highfill to Lincoln, Nebr.....	1
Highfill to Ottumwa, Iowa.....	1
Highfill to Janesville, Wis.....	1
Highfill to Minneapolis, Minn.....	1
Tontitown to Minneapolis, Minn.....	2
Tontitown, to Deadwood, S. Dak.....	1
Tontitown, to St. Paul, Minn.....	4
Tontitown to Grand Island.....	1
Tontitown to Burlington, Iowa.....	1
Tontitown to Des Moines, Iowa.....	3
Tontitown to Kansas City, Mo.....	1
Mount Comfort to Janesville, Wis.....	1
Mount Comfort to Minneapolis, Minn.....	1
Mount Comfort to Pipestone, Minn.....	1
Mount Comfort to Kansas City, Mo.....	7
Mount Comfort, to Denver, Colo.....	1
Litteral to Minneapolis, Minn.....	5
Litteral to Holdrege, Nebr.....	1
Litteral to Des Moines, Iowa.....	1
Litteral to St. Joseph, Mo.....	2
Litteral to St. Paul, Minn.....	1

Total..... 54

Litteral to Kansas City, Mo.....	4
Litteral to Sioux Falls, S. Dak.....	1
Litteral to Topeka, Kans.....	2
Litteral to Omaha, Nebr.....	3
Litteral to Sioux City, Iowa.....	1
Elm Springs to Des Moines, Iowa.....	1
Elm Springs to Milwaukee, Wis.....	1
Steele to Minneapolis, Minn.....	1
Steele to Grand Island, Nebr.....	1
Steele to St. Joseph, Mo.....	1
Steele to Denver, Colo.....	1
Steele to Kansas City, Mo.....	8
Fayetteville to Detroit.....	1
Litteral to Hutchinson, Kans.....	1
Litteral to Green Bay, Wis.....	1
Tontitown to Burlington, Iowa.....	1
Tontitown to Milwaukee, Wis.....	1
Mount Comfort to Milwaukee, Wis.....	1

31

Strawberries, total..... 54

85

Lime:

Monte Ne to Ardmore, Okla.....	1
Monte Ne to Amarillo, Okla.....	2
Monte Ne to Alexandria, La.....	2
Monte Ne to Arkansas City, Kans.....	5
Monte Ne to Allen, Okla.....	1
Monte Ne to Argentine, Kans.....	2
Monte Ne to Argenta, Ark.....	2
Monte Ne to Alva, Okla.....	2
Monte Ne to Beatrice, Nebr.....	1
Monte Ne to Booneville, Ark.....	1
Monte Ne to Baton Rouge, La.....	10
Monte Ne to Cedarvale, Kans.....	1

Lime—Continued.

Monte Ne to Clyde, Kans.....	1
Monte Ne to Cheney, Kans.....	2
Monte Ne to Carlyle, Kans.....	1
Monte Ne to Carrollton, Mo.....	1
Monte Ne to Cunningham, Kans.....	1
Monte Ne to Colorado Springs, Colo.....	1
Monte Ne to Coldwater, Kans.....	1
Monte Ne to Concordia, Kans.....	1
Monte Ne to De Queen, Ark.....	2
Monte Ne to Decatur, Ark.....	1
Monte Ne to Dardanelle, Ark.....	1
Monte Ne to Eldorado, Ark.....	2
Monte Ne to Eufala, Okla.....	1
Monte Ne to Emporia, Kans.....	1
Monte Ne to Fort Smith, Ark.....	8
Monte Ne to Florence, Kans.....	1
Monte Ne to Fairburg, Nebr.....	6
Monte Ne to Green Forest, Ark.....	1
Monte Ne to Gravette, Ark.....	2
Monte Ne to Grinnell, Kans.....	1

Total.....	66
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Monte Ne to Haskell, Okla.....	1
Monte Ne to Hutchinson, Kans.....	36
Monte Ne to Herrington, Kans.....	1
Monte Ne to Hubbel, Nebr.....	1
Monte Ne to Hot Springs, Ark.....	1
Monte Ne to Hanna, Okla.....	1
Monte Ne to Humboldt, Kans.....	1
Monte N to Jonesboro, Ark.....	1
Monte Ne to Joplin, Mo.....	1
Monte Ne to Kansas City Mo.....	1
Monte Ne to Lincoln, Nebr.....	5
Monte Ne to Little Rock, Ark.....	8
Monte Ne to Larned, Kans.....	1
Monte Ne to Lanagan, Mo.....	1
Monte Ne to Mulberry, Kans.....	1
Monte Ne to Marianna, Ark.....	1
Monte Ne to Muskogee, Okla.....	14
Monte Ne to McPherson, Kans.....	1
Monte Ne to Mena, Ark.....	3
Monte Ne to Marvill, Okla.....	1
Monte Ne to Morrilton, Ark.....	1
Monte Ne to Malvern, Ark.....	2
Monte Ne to Norwich, Kans.....	1
Monte Ne to Newmans Grove.....	1
Monte Ne to Nashville, Ark.....	1
Monte Ne to Okemah, Okla.....	2
Monte Ne to Onaga, Kans.....	1
Monte Ne to Ordway, Colo.....	1
Monte Ne to Oklahoma City, Okla.....	1
Monte Ne to Omaha, Nebr.....	1
Monte Ne to O'Neil, Nebr.....	1
Monte Ne to Okeman, Kans.....	1

Total.....	65
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Monte Ne to Pueblo, Colo.....	3
Monte Ne to Protection, Kans.....	1
Monte Ne to Pittsburg, Kans.....	6
Monte Ne to Pine Bluff, Ark.....	3
Monte Ne to Panama, Okla.....	1
Monte Ne to Pryor, Okla.....	2
Monte Ne to Poteau, Okla.....	1
Monte Ne to Rushton, La.....	2

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Lime—Continued.

Monte Ne to Russellville, Ark.....	2
Monte Ne to Sommerfield, Kans.....	1
Monte Ne to Salina, Kans.....	7
Monte Ne to Shreveport, La.....	1
Monte Ne to Slaton, Tex.....	2
Monte Ne to Shawnee, Okla.....	1
Monte Ne to Stamps, Ark.....	1
Monte Ne to Sedon, Kans.....	1
Monte Ne to Sand Springs, Okla.....	4
Monte Ne to Towanda, Kans.....	1
Monte Ne to Texarkana, Ark.....	12
Monte Ne to Tulsa, Okla.....	21
Monte Ne to Topeka, Kans.....	1
Monte Ne to Vale, Mo.....	1
Monte Ne to Wausa, Nebr.....	1
Monte Ne to Wellington, Kans.....	2

Total..... 78

Monte Ne to Winfield, La.....	1
Monte Ne to Watts, Okla.....	3
Monte Ne to Waldron, Ark.....	1
Monte Ne to Wisner, Nebr.....	1

Total..... 6

Total cars lime..... 215

Recapitulation.

Evaporated apples.....	49	Wheels.....	1
Apple waste.....	16	Lime.....	215
Empty carriers.....	2	Grapes.....	6
Canned goods.....	64	Strawberries.....	85
Corn.....	23	Apples.....	249
Drill rig.....	2	Total.....	1,095
Emigrant movables.....	20	Package cars:	
Eggs.....	5	Rogers to Center.....	1
Dried fruit.....	3	Fayetteville to Way.....	32
Hoops.....	1	Rogers to Louisville.....	1
Hay.....	5	Total.....	34
Scrap iron.....	7	Total.....	1,095
Junk.....	10		1,129
Lumber.....	8	Switched to Kansas City's station at	
Live stock.....	76	Siloam Springs:	
Machinery.....	1	Bottles.....	18
Nuts.....	1	Barrels.....	29
Oats.....	6	Sawdust.....	1
Oil.....	1	Vinegar.....	17
Paper.....	1	Cider.....	2
Peaches.....	1	Shavings.....	3
Wire.....	1	Oats.....	1
Wheat.....	1	Apples.....	244
Stone.....	2	Coal.....	10
Staves.....	1	Machinery.....	1
Spokes.....	2	Total.....	126
Spuds.....	1		
Tanks.....	1		
Ties.....	170		
Mine ties.....	1		
Mine props.....	45		
Vehicle wood.....	12		

¹ Does not include those in storage at Siloam Springs or in switching service only.

² Includes all apples for cold storage.

Cars delivered to Frisco at Rogers during year 1917.

Oats.....	1	Delivered to Frisco for switching—	
Lumber.....	41	Continued.	
Ties.....	117	Nails.....	2
Props.....	20	Roofing.....	2
Caps.....	3	Woodenware.....	1
Grapes.....	2	Corn.....	4
Dried fruit.....	3	Furniture.....	2
Emigrant outfit.....	13	Soap.....	4
Vinegar.....	136	Beverages.....	1
Tanks.....	1	Beds.....	1
Live stock.....	9	Nails.....	2
Brick.....	1	Blue vitriol.....	1
Boiler.....	1	Bran.....	1
Lime.....	39	Bale ties.....	2
Shooks.....	1	Ammunition.....	1
Wood.....	1	Feed.....	4
Eggs.....	14	Wheat.....	1
Merchandise.....	3	Shooks.....	1
Racks.....	6	Stoves.....	1
Junk.....	3	Sash weights.....	1
Wheat.....	3	Engines.....	1
Oats.....	6	Hardware.....	1
Wagon material.....	1	Dried fruit.....	4
Canned goods.....	5	Cement.....	1
Apple waste.....	12	Paper.....	2
Sirup.....	1	Oil.....	33
Oil.....	2	Wire.....	2
Feed.....	1	Lard.....	3
Tomato pulp.....	2	Implements.....	8
Corn.....	14	Sweat pads.....	1
Cement.....	1	Coal.....	28
		Sirup.....	4
Total.....	463	Beans.....	1
Delivered to Frisco for switching:		Wagon wood.....	2
Tinware.....	1	Horseshoes.....	4
Galvanized ware.....	1	Screen doors.....	1
Sand.....	4	Total.....	134

Cars received from Frisco at Fayetteville during year 1917.

Emigrant outfit.....	2	Cars received from Frisco for switch-	
Shooks.....	1	ing:	
Boilers.....	1	Lumber.....	10
Apples.....	14	Rives.....	2
Cans.....	1	Spokes.....	1
Barrels.....	1	Cans.....	1
		Barrels.....	3
Total.....	20	Boxes.....	1
		Total.....	18

Cars delivered to Frisco at Fayetteville during year 1917.

Hay.....	1	Cars delivered to Frisco for switch-	
Emigrant outfit.....	1	ing:	
Live stock.....	1	Wood.....	8
Lumber.....	2	Vinegar.....	3
Merry-go-round.....	1	Boiler.....	1
Apples.....	8	Dried fruit.....	1
Straw.....	1	Canned goods.....	2
Tanks.....	1	Total.....	15
Vinegar.....	1		
Fertilizer.....	1		
Canned apples.....	1		
Total.....	19		

Cars received from Frisco at Rogers during year 1917.

Merchandise.....	3	Iron.....	1
Hay.....	1	Machinery.....	2
Coal.....	134	Shavings.....	2
Hoops.....	2	Oats.....	1
Feed.....	10	Canned goods.....	1
Oil.....	4	Furniture.....	1
Brick.....	2		
Barrels.....	39	Total.....	352
Sewer pipe.....	3		
Lime.....	6	Cars received from 'Frisco for switch-	
Vinegar.....	19	ing:	
Lime and sulphur solution.....	2	Cottonseed meal.....	2
Spuds.....	2	Chatts.....	4
Cottonseed meal.....	1	Fertilizer.....	2
Lumber.....	6	Barrels.....	5
Emigrant outfit.....	6	Oil.....	6
Fertilizer.....	3	Crates.....	1
Staves.....	8	Meal.....	1
Heading.....	2	Hay.....	26
Shooks.....	11	Coal.....	17
Chatts.....	1	Feed.....	52
Cider.....	2	Brick.....	2
Bottles.....	17	Flour.....	20
Autos.....	2	Bananas.....	13
Cement.....	2	Oranges.....	3
Bridge material.....	1	Lemons.....	1
Sugar.....	5	Cabbage.....	1
Sirup.....	3	Spuds.....	1
Flour.....	5	Lumber.....	1
Salt.....	5		
Apples.....	12	Total.....	158
Cans.....	25		

Mr. HOBBS. The Kansas City & Memphis Railway Co. received from the Kansas City Southern Railway Co. in 1917, 762 carloads of freight. This report does not include less-than-carload freight. I might add that 95 per cent of this tonnage, or possibly 98 per cent, was interstate tonnage, not State tonnage.

The Kansas City & Memphis Railway Co. delivered to the Kansas City Southern Railway Co. during this same period 1,129 carloads of freight. I might add that a large per cent of this tonnage was of a perishable nature. We handled approximately 500 cars of green apples. We have three large apple storage warehouses on our line. We handled approximately 100 car of strawberries. Our line is quite a heavy fruit line. We handled also a large amount of lumber products, such as mine ties, mine timbers, and at one point on our line now we have approximately 200 cars of this material stacked up ready for movement.

We have shown a deficit, or a very small net amount of operating income, operating revenue for the past three years. I have all the statements here compiled with all the data, as well as our balance sheet for the past three years, and the total for the three years we show a net operation revenue of \$22,107.60, or for each year \$7,369.

Mr. McAdoo's order, if it eliminates and does not take care of us in any way, I do not know what is going to become of us. We can not go much further.

As I stated, this property is in the hands of the court at the present time. It is going to be sold, possibly in February some time, but if our tonnage is taken away from us and the Government takes no

hand whatever in looking after us, and if we are nonessential, we will have to quit business, because the stockholders I do not think will even buy this property in.

The eastern terminus of our line in Arkansas is here shown on this map, and we are building through the timber country over here, going from the western part through to the eastern part. There are no railroads in this territory at all. Your Government statistics will show you that the largest body of hardwood timber in the world is located in this undeveloped territory. Our road is like most of the little roads in Arkansas. We are developing the country.

There are 57 common carriers in the State of Arkansas, with a total mileage of 5,240 miles. Six of the principal trunk lines of this territory have a mileage of 3,951 miles. The remaining 51 carriers have only 1,289 miles, making the 51 approximately an average of 24 miles for each line.

You can see from the map that I have got, if you care to look at it, that they go to all corners of the State. The trunk lines practically split the State open, and these little lines are going into the coal fields, into the timber fields, the cotton fields, and they furnish practically the trunk lines with all their tonnage.

Senator KELLOGG. You mean the little short lines?

Mr. HOBBS. Yes, sir.

Take our line, for instance, under this order of Mr. McAdoo, take the town of Fayetteville, Ark, a town of 12,000 or 15,000 population; we have terminals there, industries on our track. The way I construe this order, with tonnage destined to St. Louis, Mo., even loaded on our rails, it is necessary for us to turn it over to our connection for a nominal switching charge that will take away from us what we have spent money to build up.

Senator KELLOGG. I do not understand how this will be taken away by the order of Mr. McAdoo. Have they not got to ship into that territory and ship out of that territory just the same, with the trunk lines in the hands of the Government?

Mr. HOBBS. It is this way, Senator. Take our road, for example, there are many hardwood lumber mills or finishing factories on our line. They get rough material out in the interior on our railroad and we bring it in there at what the State provides for the rate on logs, which is very nominal. In fact, it will not pay for its operation at this time. They finish that car, finish the product, and ship it out, we will say, to St. Louis, Mo. We are 188 miles farther from St. Louis than the most direct line. Therefore, under this order of Mr. McAdoo, it will be necessary for us to switch that car to our connection. Of course, I am only familiar with the conditions in the South and in our territory, but shooting all of this traffic to the lines that are the most direct route is simply going to congest them in such a way that they are going to be unable to move the traffic that they have. They are unable to move the traffic that they have now. If you eliminate us little fellows, where we can help out and take care of business, you are going to congest conditions so it is going to be impossible for these carriers to operate.

Take one of our carriers, the Frisco, which is a large and important factor in commercial transportation facilities in our country. They have been practically blocked for months and months, and have had embargo after embargo, and if you take and throw all the business

of all these little feeders upon it, regardless of the routes, it is going to be impossible.

Senator KELLOGG. You mean there are short lines reaching the principal points that you reach?

Mr. HOBBS. Yes, sir. We connect with other carriers, not only our lines but other lines throughout the State.

Take the Kansas City Southern on the west of us. It has been in fine condition all the year. People in that territory will route stuff away around in order to get it through this other gateway because there is no congestion on that side of us, but on the other side of us congestion is very severe, and, in fact, the Frisco turns us business and will be glad to give us business around via the circuitous routes providing we can handle it. But, I am even afraid to handle business under this order.

I think those things should be worked out in zones and in territories where the conditions will permit them. I know that traffic is abused in lots of ways in this routing, in its handling heretofore.

Senator CUMMINS. When Mr. McAdoo finds that he can not handle all the freight by employing simply the shortest lines, he will be compelled to resort to these other lines, will he not?

Mr. HOBBS. It should be worked out now, the congestion is getting so bad down in our territory. Cars have been standing for months and months, in congested yards, that have not been moved, and you take this territory here and throw all this business of all these little 51 carriers to six trunk lines, because they are the shortest route, and you are going to congest them so that they are not going to be able to handle the traffic. They can not handle it as it is, hardly.

The ACTING CHAIRMAN. Are there any further questions?

Mr. ROBINSON. Are you building an extension of your line now into that timber section to the east of you there for new development?

Mr. HOBBS. Yes, sir.

Mr. ROBINSON. Have you got new developments in prospect there?

Mr. HOBBS. Yes, sir.

Mr. ROBINSON. Do you expect any substantial increase in your return on your property in the near future as a result of that improvement that you are making?

Mr. HOBBS. Yes, sir; that is why the bondholders are continually putting up money for its development. They have been meeting the deficit that we have shown here, and they have, of course, been expecting a deficit, but they have been expecting that developments in this new territory would be remunerative in time.

Senator CUMMINS. As I understand you, under the bill as it is now, you would not get anything?

Mr. HOBBS. No, sir; we would not get anything at all. As I say the conditions are such that we have absolutely got to quit operating. If they take all of this business that we have got and take it away from us, our earnings will fall off. I think the statement here, and the figures here show you that we will lose 60 per cent or more of our tonnage, and there is nothing to come back for it, and our bondholders are not going to take and try to develop this undeveloped territory and country, and go in and spend a lot more money. They are simply going to quit. Somebody is going to have a railroad, I do not know who it will be. I do not think anybody will want it. I would not have it.

The ACTING CHAIRMAN. Are there any other witnesses, Mr. Robinson?

Mr. ROBINSON. On behalf of my association, no. I have two or three tables here which I was to supply in response to inquiries. There are some other witnesses here that have special things that they want to present, but I assume they have made their own arrangements, as they have not asked me to represent them. I understand there is some additional testimony on behalf of the short and weaker lines. I will offer these tables here. They are prepared in response to requests made when I was on the stand.

The ACTING CHAIRMAN. They will be printed in the proper place in the record.

(The statements referred to are here printed in full as follows:)

Summary according to length of road.

[110 roads included in American Short Line Railroad Association.]

Item.	Roads under 100 miles in length.	Roads 100 to 200 miles in length.	Roads 200 to 300 miles in length.	Roads 300 to 400 miles in length.	All classes.
Mileage operated.....	3,455.77	1,013.39	730.74	729.68	5,929.58
Property investment.....	\$69,047,045	\$24,968,734	\$39,237,799	\$32,090,779	\$165,364,747
Capital stock.....	\$38,819,088	\$11,823,280	\$36,000,000	\$16,708,000	\$103,350,368
Funded debt.....	\$31,683,808	\$13,282,340	\$10,662,598	\$18,380,984	\$74,009,730
Total operating revenues.....	\$8,112,808	\$3,469,905	\$2,310,858	\$2,933,272	\$15,826,723
Net operating income.....	\$1,639,716	\$74,906	\$233,155	\$614,322	\$2,462,099
Rate of return on investment.....	2.23	0.30	0.80	1.91	1.58
Rate of return on funded debt.....	4.86	0.66	2.19	3.34	3.33
Number of roads represented.....	97	8	3	2	110

NOTE.—Class I includes roads with operating revenues above \$1,000,000 a year; Class II, those with annual operating revenues above \$100,000, but not above \$1,000,000; Class III, those with annual operating revenues of \$100,000 or less.

Summary by classes.

[110 roads included in American Short Line Railroad Association.]

Item.	Class I.	Class II.	Class III.	Total.
Mileage operated.....	381.58	3,733.61	1,814.39	5,929.58
Property investment.....	\$16,599,434	\$106,515,588	\$31,259,725	\$155,364,747
Capital stock.....	\$8,013,000	\$74,648,035	\$20,689,303	\$103,350,338
Funded debt.....	\$10,612,500	\$61,710,945	\$11,786,285	\$74,009,730
Total operating revenues.....	\$2,121,216	\$10,646,947	\$3,048,565	\$15,826,723
Net operating income.....	\$545,594	\$1,595,946	\$320,559	\$2,462,099
Rate of return on investment.....	3.29	1.51	1.03	1.58
Rate of return on funded debt.....	5.19	3.09	2.72	3.33
Number of roads represented.....	1	38	71	110

NOTE.—Class I includes roads with operating revenues above \$1,000,000 a year; Class II those with annual operating revenues above \$100,000, but not above \$1,000,000; Class III, those with annual operating revenues of \$100,000 or less.

Mileage, capital, revenues, and income, roads included in the American Short Line Railroad Association (calendar year 1916).

Road.	Miles operated.	Property investment.	Capital stock.	Funded debt.	Total operating revenues.	Net operating income.	Rate of return on investment.	Rate of return on funded debt.
Roads having annual operating revenues of \$500,000 and over:								
Fort Smith & Western R., 1899	253.65	\$11,806,200	\$5,000,000	\$6,541,511	\$927,144	\$101,888	0.86	1.56
Florida & Alabama R., 1885	102.86	2,583,550	572,000	2,113,000	551,809	61,183	2.37	2.90
Midland Valley R., 1903	381.58	16,989,434	8,013,000	10,512,500	2,121,216	545,594	3.20	5.19
Quincy, Omaha & Kansas City R., 1897	255.09	6,428,076	6,000,000	885,877	805,877	78,703	1.22	
Washington & Old Dominion R.	71.58	4,047,763	1,700,600	1,788,125	420,340	18,366	0.45	1.03
Total	1,154.76	41,455,023	21,285,600	20,955,136	4,916,386	805,744	1.94	3.85
Roads having annual operating revenues of \$100,000 and less than \$500,000:								
Alabama, Tennessee & Northern R., 1913	222.00	11,003,513	25,000,000	4,121,087	487,837	52,564	0.48	1.28
Apalachicola Northern R., 1903	98.82	2,834,102	1,000,000	2,000,000	209,742	17,142	0.60	0.86
Arkansas Central R., 1897	46.13	1,679,598	568,000		123,737	18,392	2.71	
Arkansas & Louisiana Midland R., 1915	102.20	1,230,406	1,000,000	200,000	249,000	39,692	3.23	19.85
Atlanta & St. Andrews Bay R., 1906	94.38	1,512,269	300,000	850,000	234,056	63,013	4.17	7.41
Birmingham & Northwestern R., 1910	48.70	855,352	300,000	800,000	146,611	25,632	3.00	3.20
Birmingham & Southeastern R., 1901	48.20	1,510,297	700,000	831,485	106,429	26,342	1.74	3.17
Carolina & Yadkin River R., 1897	133.50	3,989,636	1,404,250	2,090,305	451,022	14,650	0.12	1.22
Carolina & Yadkin River R., 1906	34.81	3,182,324	1,840,000	1,270,200	107,869	20,552	0.65	1.62
Charlotte Harbor & Northern R., 1897	113.79	3,301,984	2,000,000	2,000,000	466,642	65,456	1.98	3.27
Charlotte Harbor & Northern R., 1900	44.63	767,286	110,000	278,000	144,329	56,095	8.41	20.18
Columbia, Newberry & Laurens R., 1886	75.00	1,815,958	500,000	1,247,300	354,892	88,344	4.86	7.08
Durham & Southern R., 1904	58.97	1,491,108	1,350,000	375,196	375,196	168,120	11.27	
East Tennessee & Western Northern Carolina R., 1866	36.18	1,134,775	490,800	500,000	271,161	113,393	9.99	22.68
Franklin & Abbeville R., 1897	55.34	352,700	50,000	101,894	18,875	5,356	5.35	9.44
Frankfort & Cincinnati R., 1897	40.00	261,972	40,000	160,000	107,976	15,347	5.86	9.59
Gainesville Midland R., 1904	74.00	1,454,997	550,000	983,285	207,297	31,768	2.18	3.30
Georgia & Florida R., 1906	348.10	15,501,345	8,965,000	7,868,484	812,056	68,728	45	89
Georgia Coast & Piedmont R., 1906	101.24	3,402,709	1,572,000	1,817,035	150,522	12,546	37	
Georgia Northern R., 1895	67.68	922,189	600,000	300,000	235,216	68,466	7.42	22.82
Georgia Northwestern & Gulf R., 1906	35.30	513,143	40,500	555,500	115,241	20,095	3.92	3.62
Gulf, Florida & Alabama R., 1911	156.61	8,819,540	4,410,000	4,446,000	178,029	194,820	1.08	1.21
Live Oak, Perry & Gulf R., 1905	83.88	1,333,315	600,000	824,000	238,000	110,539	8.26	13.41
Northeastern Railroad of South Carolina, 1898	90.60	626,638	100,000	375,000	112,043	24,385	4.63	6.50
Ocala Southern R., 1908	110.37	775,987	265,000	416,000	132,485	131,570	4.07	17.59
South Georgia R., 1896	81.80	470,315	58,000	204,000	218,686	42,335	9.00	20.97
Sugar Land R., 1905	38.94	654,674	109,400	400,480	188,520	83,994	12.93	20.97
Tennessee & North Carolina R., 1911	37.11	831,141	306,100	350,200	127,497	22,473	2.74	0.83
Tennessee, Alabama & Georgia R., 1911	99.52	1,546,146	3,046,365	1,546,361	207,467	101,506	1.41	1.64
Trenton & Atlantic R., 1903	10.00	1,824,186	2,000,000	98,317	20,800	98,317	7.56	0.62
Virginia & Carolina Southern R., 1913	163.01	1,094,115	141,000	1,324,000	143,511	44,896	7.01	0.33

Mileage, capital, revenues, and income, roads included in the American Short Line Railroad Association (calendar year 1916)—Continued.

Road.	Miles operated.	Property investment.	Capital stock.	Funded debt.	Total operating revenues.	Net operating income.	Rate of return on investment.	Rate of return on funded debt.
Linville River Ry., 1899—Continued.								
Ocala & Southwestern R. R., 1909.	23.00	\$47,496	\$25,000	.....	\$15,575	\$3,410	13.92	.....
Ocklawaha Valley R. R., 1913.	53.28	253,050	250,000	.....	38,589	11,157	4.41	.....
Onondaga & Western R. R., 1913.	20.00	430,833	200,000	\$32,000	5,259	114,939	3.47	146.68
Pelham & Havana R. R., 1906.	26.00	145,419	100,000	10,288	32,147	8,239	5.68	81.20
Pickens R. R., 1892.	9.30	114,333	63,000	32,000	17,769	9,665	1.88	1.28
Raleigh & Charleston R. R., 1905.	43.00	1,106,862	574,500	550,000	87,645	20,410	1.85	3.71
Randolph & Cumberland Ry., 1909.	22.50	1,226,589	1,000,000	136,000	24,155	4,014	25.33	2.91
Red River & Gulf R. R., 1905.	26.20	180,126	101,000	.....	73,451	46,117	11.86	.....
Roanoke Ry., 1910.	3.64	138,675	50,000	42,518	48,475	15,100	11.86	35.51
Rockingham R. R., 1910.	21.40	320,943	72,000	250,000	38,946	6,303	3.67	2.52
Rome & Northern R. R., 1909.	22.80	317,688	.....	247,970	30,372	11,839	13.62	13.87
Sardis & Delta R. R., 1903.	13.50	447,688	100,000	185,000	60,832	11,772	9.08	.....
Savannah & Statesboro R. R., 1897.	33.00	416,935	200,000	100,000	60,832	11,772	9.08	6.04
Shreveport Ry., 1910.	13.00	249,147	100,000	50,500	24,765	2,529	1.02	4.41
Shreveport, Houston & Gulf R. R., 1906.	10.75	40,173	50,000	.....	3,890	5,850	7.32	.....
Smoky Mountain Ry., 1905.	16.00	91,181	50,000	28,000	30,124	8,850	1.86	3.04
Statenville R. R., 1902.	14.00	61,181	(3)	(3)	12,000	1,545	.....	.....
Talbotton R. R., 1892.	6.63	66,920	32,500	30,000	12,757	2,498	3.73	8.32
Tampa & Gulfville R. R., 1884.	46.00	1,161,898	604,900	546,717	62,590	7,892	6.38	1.44
Tampa & Gulf R. R., 1890.	41.16	397,871	250,000	299,000	38,251	7,920	15	.....
Tavard & Kinston & Northern R. R., 1912.	17.00	9,302	10,000	.....	32,781	8,070	396.49	.....
Warren & Onaschula Valley Ry., 1899.	5.00	20,630	3,500	.....	21,168	12,692	61.82	.....
Warrenton R. R., 1876.	16.00	313,030	316,000	.....	78,458	44,048	14.07	.....
Watkins & Yaulkin River R. R., 1905.	3.00	21,389	13,200	.....	22,388	11,738	54.98	.....
Waycross & Southern R. R., 1910.	26.20	3,910,802	3,164,100	82,000	24,066	1,46,289	1.18	156.45
Waycross & Southern R. R., 1910.	22.60	168,534	147,900	.....	43,976	1,6543	13.88	.....
Wellington & Powellville R. R., 1912.	44.50	450,830	420,000	315,350	52,471	11,136	2.75	3.53
Wellington & Powellville R. R., 1893.	22.00	225,163	90,000	.....	55,981	6,182	2.47	.....
Total.	1,814.39	31,256,725	20,689,303	11,786,285	3,048,505	320,559	1.03	2.72
Grand total.	5,926.68	155,364,747	103,350,338	74,009,730	15,896,798	8,462,069	1.58	3.33

1 Six months ending Dec. 31, 1916.

2 Date not available.

Mr. ROBINSON. The probabilities are that we will want to ask the indulgence of the committee at the proper time for presentation of some of our views on this testimony.

The ACTING CHAIRMAN. Mr. Robinson, the chairman is called out temporarily and I do not know what his plans are. I can not speak for him, but I have no doubt you will be given the opportunity to do that.

Senator CUMMINS. Mr. Chairman, there are representatives of other roads here, I am sure, who desire to be heard. There is the representative of the Kansas City, Mexico & Orient, I think. Who is the gentleman that represents that road?

Mr. D. J. HAFF. I am counsel and Dr. De Bernardi is general manager. Mr. De Bernardi is the vice president and general manager of the Kansas City, Mexico & Orient Railroad, a man of 35 years experience in the railroad business, formerly with the Missouri Pacific.

**STATEMENT OF MR. A. DE BERNARDI, VICE PRESIDENT
AND GENERAL MANAGER OF THE KANSAS CITY, MEXICO
& ORIENT RAILROAD, KANSAS CITY, MO.**

The CHAIRMAN. Mr. De Bernardi, will you give your full name and address, and your road to the stenographer, please?

Mr. DE BERNARDI. I am now vice president and general manager of the Kansas City, Mexico & Orient Railroad. I have been with them six months. Prior to that time, for a period of 35 years, I was connected with the Missouri Pacific Railroad in all capacities, from laborer in the maintenance of way department to general superintendent, including slight train service and telegraph service. Therefore, my experience has been very largely in construction, maintenance, and operation. I am not well versed in finances.

When I came here it was not my intention to go before the committee, as I said, but so far I have not heard evidence that directly touched upon the conditions of this road, and I have tried here to briefly say what we expect to be, what we were, and what we need now.

The Kansas City, Mexico & Orient Railroad Co. was planned from Kansas City, Mo., across Kansas, Oklahoma, Texas, and northern Mexico, to the west coast of Topolobampo, approximately 1,600 miles. Seven hundred and thirty-seven miles from Wichita, Kans., to Alpine, Tex., are constructed and in continuous operation. It is in good physical condition, reasonably well equipped with motive power and cars. It has a large modern locomotive and car shop at Wichita, Kans., and fair repair facilities at San Angelo, Tex. There are also approximately 140 miles of right of way in Kansas and Texas on which the grade is completed.

Furthermore, which may not be of interest to the committee, there are 230 miles in old Mexico, constructed and nearly all now in operation, the northern part of Mexico.

At Wichita, Kans., the present northern terminus, connections are made with four trunk lines. It also connects with several roads at intermediate points, and the Southern Pacific at Alpine, Tex., which is only about 60 miles from the Mexican border. This connection, and with the Texas Pacific, at Sweetwater, forms a through route to west Texas and southern California, and we have considerable

business that way, particularly now since some of the more direct lines are very badly congested and we are not.

It developed and serves good agricultural territory in Kansas, Oklahoma, and north Texas, and serves exclusively 227 miles south from San Angelo, Tex. There is no other railroad anywhere near us for this 227 miles.

The original cost in the United States, in approximate figures, is \$22,000,000, and in old Mexico, \$5,500,000. This capital was raised, or practically so, and construction was in progress until the depression of 1907 and 1908, which affected all roads. Then, subsequently, the Mexican War, and the road was forced into the hands of a receiver. During two years that it was in the hands of the receiver, 100 additional miles were authorized by the court and were constructed. That is the extreme southwest portion, forming the connection with the Southern Pacific.

At the end of two years they reorganized and the road emerged with only \$6,000,000 or preferred indebtedness in the United States, all authorized by the court.

It then seemed well on its way to completion, when the European war of 1914 again interrupted, because considerable of the capital was coming from England, a great deal of it. Of course, that was immediately stopped, and although there were 737 miles here in continuous operation, by reason of it not being finished to either terminus, particularly to Kansas City, where we would have friendly connections, and by friendly connections I mean roads that are not competitors, all of our connections now being competitors, and very naturally give us no business that they can afford, and we subsist entirely upon our own solicitation. They were forced by your laws to respect the routing of the shipper prior to this very recent order, which of course, now has obliterated that. But, on that account, and a very severe drouth in Texas for two years, the worst drouth in the history of the State, the general advance of our costs, including labor and materials and the general low rates, if I will be pardoned for that suggestion, its earnings were insufficient to meet its interest and obligations again, and in April, 1917, it was again forced into the hands of the court, with Mr. W. T. Kemper, of Kansas City, Mo., serving as sole receiver with no salary whatever. He had some interest in the property.

This court authorized an issue of \$2,500,000 receiver's certificates to adjust some of the old accounts and provide a working capital to tide through the war. You understand, this receivership came after the declaration of war.

A portion of these have been sold, but taking over of operation of the lines by the Government stopped the sale of the remainder. Therefore, there is no further financial assistance available from that source.

During the three-year period referred to here as the standard period, I believe, ending June 30, 1917, the cost of maintenance and operation, including interest on the securities authorized by the court, this \$6,000,000, exceeded the earnings. Therefore, provisions for compensation under article 1 proposed by the bill would, of course, be fatal.

We feel that the provision made in article 3 is entirely too long a route for poor roads.

However, during the last of 1917, through intense solicitation and some additional economies, we began to make a better showing. The earnings for October, 1917, exceeded all expenses, including the interest on this \$6,000,000 gold notes, had we been paying interest. Of course, being in the hands of a receiver, we were not paying interest. We had every reason to believe that we were well on our way to success, until the taking over of the roads by the Government, practically stopping active solicitation, and the fact that the freight we have solicited may be diverted from us. In some instances we are the short line and in many others we are not, but as I remarked a while ago, we are entirely dependent upon our competitors to give us their business now.

Instructions are out by the Government to disregard the shipper's routings. This order will affect the Orient road very seriously, this taking over by the Government. I am not prepared to say, gentlemen, to what extent that will be. It may be that this order will double our earnings, and it may cut them half in two. We have no basis from which we can figure. Neither have we any idea what is in store for us in the way of increased cost of labor.

The Government has also taken over that important factor in connection with our operation. Under these conditions and with an already large pay roll and material bills to be met currently, if we now fail to earn these expenses, with no definite provision made by Congress to protect such lines, there will be no alternative except that we permanently suspend operations and dispose of the property as junk.

It may not be of interest to the committee, but I will say that at present prices that could be done and more than cover all of our outstanding preferred indebtedness. Our locomotives, rail and junk, would do that. But, of course, we know that the Government had no such intention when they took us over.

In this particular case, the suspension would leave a very large area of agricultural and stock territory with no railway facilities whatever, which, of course, would be resented by them, as it would mean utter ruin to them.

Therefore, under these conditions that we have set forth here, I can not but feel that inasmuch as you have taken charge of us, and have interrupted the flow of our traffic and possibly our expenses, that it is only due us that we be guaranteed by the Congress, definitely guaranteed, I will say, for our operating expenses, including maintenance, and the interest on such obligations as are now approved by the United States court.

It is possible we will not need that protection. If we are used to a greater extent than we have been in the past, we can take care of ourselves. If we had been let alone in the general course of events as they were, we were prepared then to take care of ourselves from our earnings, and if we failed in that, then from the sale of our receiver's certificates, and we feel, if you please, that we should be afforded that full protection and not only we, but the people whom we serve throughout this 740 miles of territory.

This would make us safe. It would enable us and others in our class to be retained in service for such use as the Government may need, and I think they will need us, and likewise to serve the people in that territory, and we respectfully ask that some definite provision

be made by Congress to give us that protection, and we can not accept a long route, because, should we fail, our men, were they so disposed to wait several months until we went through the routine provided by this bill to secure a compensation, could not do so. The cost of foodstuffs are entirely too high, and they could not wait if they wished to. The people from whom we purchase our material would not, because they need not. There is plenty of sale for fuel and all other materials used by a railroad to companies who are in position to pay for them.

I came here with the knowledge, as I supposed, that we had all been taken over by the Government. That is still my opinion. But I have heard argued since that there is a possibility that some of us may not be needed. I can not but feel that the separation of any one line would be disastrous to the whole structure, and particularly to that certain line. I have in mind, for instance, that a surgeon amputating that finger for me; I can get along nicely without it, but the finger would have a very hard row to hoe. It would not be necessarily fatal to it, it might be grafted if there was some other body kicked out that would accept the finger. It might be grafted to that, but its chances would be very remote.

So I feel that the roads are all taken over, and should be, or none should be.

With reference to the board proposed, and termed, I believe, "auditors," with all due respect to the Interstate Commerce Commission, who are big men, I hardly think it fair even to them that this very important matter of valuation be left entirely with that one body. However earnest they have been in the past to deal without prejudice as between the shippers and the railroads, it is common knowledge that the shippers assume that the Interstate Commerce Commission represents them in these rate hearings. Where they gain that information I am not clear, but it is entirely probable, gentlemen, that the railroads from the same source may have acquired the same impression, so I believe that some other board or some other construction of a board should be arranged for.

I believe the Interstate Commerce Commission should be represented on that board. It is my opinion that the railroads should be represented also. Their property is being taken away, and they should have a voice in the valuation. Then, likewise, some certain disinterested party like a United States judge, or some one else, whom we know would be disinterested.

I want to say again that this is no reflection on the efforts of the Interstate Commerce Commission, but it is common knowledge that the shippers believe that they are represented by that body.

One more thought and I will be through. That has reference to the last article, No. 13. It was possible for the Government to take over the control of these roads in one night. I can not but think that there is some other one night or one day, within at least a period of one year after the close of the war, where they could safely intrust us again with our property.

I thank you.

Senator CUMMINS. With regard to the composition of the condemnation tribunal, you think it ought to be composed of a member of the Interstate Commerce Commission, and some one selected by the railroads, or railroad, and then the two to select a third?

Mr. DE BERNARDI. That is the usual procedure, Senator.

Senator CUMMINS. I do not know what the laws of the Territory or State in which your road is built may be, but when your road starts to condemn a right of way across a farm, neither the farmer nor the road was given the opportunity to select the tribunal, or any part of the tribunal, was it?

Mr. DE BERNARDI. I am not entirely clear on that, Mr. Senator. I understand ordinarily that is correct.

Senator CUMMINS. If a condemnation tribunal for the acquisition of a right of way or any other phase of eminent domain is properly composed of public officers selected by a public official, why is not the same thing true in this instance, when we are seeking to condemn the use of this property?

Mr. DE BERNARDI. That may be true, but I can say without hesitation that so far as we are concerned, and I believe I voice the sentiments of most roads, we are willing to leave that to any informed, disinterested body.

Senator CUMMINS. That is just what I have in mind. I say nothing about the Interstate Commerce Commission. I suppose it is pointed out because of its familiarity with the nature and the operation of railroads, but the tribunal ought to be composed of disinterested, impartial people, all of whom will represent the Government of the United States, and it ought not to be composed of representative of either shippers, railroads, or any other special interests, it would seem to me.

Mr. DE BERNARDI. I am very much inclined to agree with you, Senator. I only suggested the other as being the usual form of arbitration, and I stand corrected that this is not exactly an arbitration.

Senator CUMMINS. No; an arbitration is a voluntary arrangement.

Mr. DE BERNARDI. Yes, sir.

Senator CUMMINS. Which results from an agreement?

Mr. DE BERNARDI. Yes, sir.

Senator CUMMINS. This is not a voluntary arrangement, and involves no agreement, as I understand it.

Mr. DE BERNARDI. Any informed disinterested body would be agreeable to us.

Senator CUMMINS. Coming back to another point, the compensation provided for in section 1 as the bill now is, would give your road how much?

Mr. DE BERNARDI. Nothing. We have a deficit for those three years. We were unable to pay interest on the \$6,000,000 authorized by the court.

Senator CUMMINS. So it is perfectly apparent that unless you are to be driven to the condemnation proceeding, there must be some other standard for such roads as yours?

Mr. DE BERNARDI. Yes, sir; I think the roads must be classified. There are too many different kinds and classes and conditions to be all placed in one pot.

Senator CUMMINS. Do you know from anything you have learned since coming to Washington whether you are in or out of this scheme?

Mr. DE BERNARDI. Not from anything I have learned since I came here, Senator, but I learned from instructions received from the Director General before I started that we were in Government hands.

Senator CUMMINS. His adviser has taken a different view of that. I do not mean that he has decided that you are not in. As I understand it, it has been decided that those cases must come up and be presented to the Director General and that then the decision will be made.

Senator McLEAN. You had no official notice of any change in the situation?

Mr. DE BERNARDI. No change since instructions to get in bed with our competitors, which we did.

Senator CUMMINS. I know, but Mr. McAdoo has the administration of the law in that respect, and his representative has said that there has been no decision as yet whether you are in or out. He asked whether you had made any application to the Director General in order to ascertain whether you are in or out.

Mr. DE BERNARDI. I have not; but I saw the Director General for a few moments last night, likewise Judge Payne, and Judge Payne raised the point in discussing with him our conditions if we would be satisfied to be left out, and I assumed by that that he considers we are in.

Senator CUMMINS. That is rather indirect and unsatisfactory, I would think.

Mr. DE BERNARDI. But of course it is my thought that this entire move is to unify the roads, not any one road, and it seems to me it would be just as fair for the Government to say, "We want the Santa Fe main line, but we do not want any of the branches. It is up to you owners of the Santa Fe to take care of these weak branches from some other source than the Government. We only need your main line."

Senator CUMMINS. I am asking these questions in order to know whether you desire to make any suggestion to this committee as to legislation along that line. In other words, do you want the Congress to compel the President to take you in?

Mr. DE BERNARDI. Yes, sir; if it is not definitely known that we are all in, I suggest the Congress take a definite step that we be all in or all out.

Senator CUMMINS. That is, you want legislation that will practically say all or none?

Mr. DE BERNARDI. Yes, sir; the situation in front of us is certainly uncertain enough without having that confronting us, not know what day we would be notified that we had been pruned off and left to drop where we might fall.

Senator CUMMINS. Have you considered whether legislation of that kind is within the power of the Congress?

Mr. DE BERNARDI. I have not enough legal knowledge to answer that question. I hope it is.

Senator CUMMINS. I express no opinion upon that. I suppose we could take them all out, possibly, but whether we could compel him to take them all, if he took any, that is another proposition.

Mr. DE BERNARDI. I will venture this suggestion, that if all are not taken in, it will create a very great panic in this country to endeavor to leave some in and some out. The securities of these roads are too widely distributed, and it would have, in my opinion, too serious an effect on those who were left out to be at all healthful for the Govern-

ment, and would do anything, in my opinion, but promote the interest of the war. I think it would have the opposite effect.

The ACTING CHAIRMAN. Are there any further questions?

Mr. HAFF. Do you wish to say anything about this line being completed or the effect its noncompletion will have upon industry?

Mr. DE BERNARDI. I think I did mention one reason that we are not more prosperous is the fact we are not completed. There have been some disinterested experts who looked over this property as proposed, across from the central part of Missouri to the west coast, and, in their opinion, when it is completed, it will be a splendid property, both for the United States and as an international line.

I do not know that the committee is so much interested in that, but that also is the reason that our bondholders and those interested have hung on to the road and paid some of these deficits, because they expected to get a return on their full investment later, we feel the war and this move has prevented further progress with construction.

We have 140 miles of grade property ready to lay the rails.

Senator CUMMINS. Is your line the one originally planned to connect North and South America?

Mr. DE BERNARDI. No; I think not.

Senator CUMMINS. There was some proposal of that kind a few years ago that was intended to connect up lines, so that we would have finally an all-rail route into South America.

Mr. DE BERNARDI. I have been here such a short time I am not as well acquainted with what they had in mind as I wish I were. I know they contemplated a deep harbor at Topolobampo, opening up the great resources across northern Mexico, and I might add that in the light of what is behind us I am under the impression that that line completed down into Mexico a short distance, 60 or 70 miles, will soon be of very great benefit to the United States in clearing up the Mexican situation. I have no doubt but that it will be up to us to clear that up some time later when we get this chore off our hands.

The ACTING CHAIRMAN. Are there any further questions? If not, that is all.

Are there any other of the short-line-road representatives here that desire to be heard?

There do not appear to be any other witnesses here that wish to be heard on this line this afternoon.

Senator CUMMINS. Mr. Chairman, there is a witness who expected to come on after the short lines were heard. He told me that he had an engagement to see Mr. McAdoo, or hoped to be able to see him, about 2 o'clock or 2.30, and that he believed that he could be here at 3.15. I have not heard from him since.

The ACTING CHAIRMAN. Who is that, Senator?

Senator CUMMINS. Mr. Walter.

The ACTING CHAIRMAN. I think we are going to have a vote at the Senate at 4 o'clock, and as the witnesses are not here, it may be better for us to adjourn until to-morrow.

Senator CUMMINS. I do not make the suggestion in order to keep the committee in session at all, but I do it rather to explain the absence of Mr. Walter who has expected, I think, to come on at this time.

(Whereupon, at 3.15 o'clock p. m. the committee adjourned until January 18, 1918, at 10 o'clock a. m.)

GOVERNMENT CONTROL AND OPERATION OF RAILROADS.

FRIDAY, JANUARY 18, 1918.

COMMITTEE ON INTERSTATE COMMERCE,
UNITED STATES SENATE,
Washington, D. C.

The committee met pursuant to adjournment at 10 o'clock a. m. in the hearing room of the committee, Capitol Building, Senator Smith of South Carolina, chairman (presiding).

The CHAIRMAN. The committee will come to order. Senator Cummins, I believe Mr. Walter was one of those called and he is present. Mr. Walter, you will take the stand. Will you give the stenographer your full name and address, also your official connection, or what you desire to represent before this committee?

**STATEMENT OF LUTHER M. WALTER, OF THE FIRM OF BORDERS,
WALTER & BURCHMORE, LAWYERS, CHICAGO, ILL.**

Mr. WALTER. In appearing here this morning I do so in response to the request of the committee, and not on behalf of any particular client or any particular interest.

I may say in passing that for the period ending with the first of 1910 for some half dozen years, I was attorney for the Interstate Commerce Commission and in its service, and had some experience in the various branches of the commission in a legal way. Since 1910 I have been engaged in the practice of law in Chicago, representing both shippers and carriers in matters before the Interstate Commerce Commission and public service commissions of the various States.

I have, as you may suppose, paid some attention to these questions which you have to deal with here, and I have some views which I will be glad to present and which I hope may not be an obstacle to your reaching proper conclusions.

My practice generally has been representing shippers. I have represented the short line railroads, particularly in the Tap Line case. I have represented the State commissions, particularly in the Shreveport case. I think I can say on behalf of the shipping interests of the country that they are just as desirous of winning the war and of undergoing any sacrifice necessary to win the war as any other class of people in the country. They will not stand in the way of any measure which is necessary to secure that end.

You have had thrust upon you by the events of the last few weeks questions which our country regards as of the utmost importance. The railroads of the country may be regarded as the largest single element in our national life. If they are not properly operated, not properly managed, all other industries must feel the effect of that failure.

The Director General has taken, by the proclamation, possession and control of all the railroads in the country. I understand that he now desires to operate only some of them and to take possession and control only of some of them. I think that is a mistake. The two hundred odd thousand miles of railroads of this country have been operated as one unit. By legislation you have made all of the rails of these railroads parts of one general highway. You have given the shipper the right to ship his freight over any route between a point of origin and destination. To take, therefore, only a few of these lines, or to exclude a part of them, is to separate or to draw a line between certain of the carriers, one class to have one kind of treatment and another class to have another.

The short lines have been presenting their case. I want to call your attention to the fact that to-day the tariffs on file with the Interstate Commerce Commission name rates, and a single rate from the point of loading on one of these short lines to final destination on one of the great trunk line systems in the manufacturing center. The car which moves over the short line moves over the trunk line. I have in mind one of the lines in the South, a short line, not owned by a shipper, a separate entity in every respect, and yet during the last six months they have loaded upon their rails more than 450 cars of Government material going to the great ship yards of the country. That freight has moved upon a single joint rate. That road has not the cars to send all over the country; it must look to its trunk-line connections to get those cars. It must have, therefore, the same treatment as any other railroad in the furnishing of cars and supplies for its shippers. The Government is interested in having that raw material and the President has said:

It is clearly in the public interest also that the ordinary activities and the normal industrial and commercial life of the country should be interfered with and dislocated as little as possible, and the public may rest assured that the interest and convenience of the private shipper will be as carefully served and safeguarded as it is possible to serve and safeguard it in the present extraordinary circumstances.

So I maintain that on all the short-line railroads and branch-line railroads the car supply should be open in every respect; that not only the man who furnishes the material and supplies to win the war but the men who furnish employment for all the labor of the country and furnish materials for their industries should be alike treated the same as the man who is located on the trunk line; in other words, dislocate private industry as little as possible.

The revenues to carry on this war must come from the people of this country, and you must therefore have industry go on just as well as it may consistent with the prosecution of the war and the movement of war materials and troops.

The purpose of the law under which the Director General is operating is expressly stated to be:

The President in time of war is empowered through the Secretary of War to take possession and assume control of any system or systems of transportation or any part thereof, and to utilize the same.

Now, for what purpose?

To the exclusion, as far as may be, of all other traffic thereon, for the transportation of troops, war material and equipment, or for such other purposes connected with the emergency as may be needful or desirable.

In other words, the Director General is given authority to clear the highways in order that war munitions and troops and supplies may go forward for the purposes for which they are intended, and when that has been accomplished, these highways are left open for everybody upon equal rights and with equal opportunities. Therefore, I insist that the purposes of the control are simply to clear congestion, to operate all of these railroads, open new junction points, and where these railroads intersect with each other and have not heretofore interchanged traffic, the Director General may say: "Send them through that gateway instead of putting them through the funnels, like Pittsburgh, to avoid the congestion," the purpose was operation, and that was all the purpose that the Congress had in mind when it gave the Director General the control of these roads.

Now, if the Director General takes only a few of the roads, he may leave off some of the branch lines of those roads; the cars of this country have been pooled. Two and one-half million cars have gone everywhere. If you go down in the Washington Terminal yards, you will find cars from roads in Canada, perhaps even from Mexico, going everywhere under rules and regulations. If the Director General takes over only certain roads, then the car supply will be subject to the use of those lines; those who have built railroads such as the great branch lines running into the grain belt may be deprived of car supply. The lumber mills in the Southwest or in the great Pacific Northwest may be deprived of their car supply. The terminals that serve the great cities and make it possible for the trunk lines to operate may be deprived of their car supply. Not only that, but there are these joint rates that apply. How can you act as to the trunk line unless you have taken both parties to the rates?

So, I insist that it is absolutely essential that the railroads all come under the control of the Director General, and his possession, for the purposes of the act, namely, the movement of the freight, and that therefore if there is any doubt in existing law it should be removed by providing that the railroads shall be operated as a national system, each for all and all for each.

That is the first observation that I desire to present for your consideration.

Now, taking up Senate bill 3385, I find in line 11, section 1, you have inserted the date June 30, 1917, as being the period which should be taken from which the average standard return should be computed. These railroads were taken over on three days' notice practically. It seems to me leaving out of consideration what the financial situation may have been as to the earnings of these roads that you may lay your yardstick back from December 31, 1917, over as many years as you care to take, whether three, five, seven, or ten, and when you find what that rate of return is, that then you may turn the yardstick to the future, and as these roads run along one year, two years, or three years, you may apply the same standard rate of return.

In that connection I want to call your attention to a few figures contained in the monthly reports, as tabulated by the Interstate Commerce Commission, for the 10 months ending October 31, 1917.

There is this to be observed, that in the three grand divisions of this country different results have followed. Take the official classi-

fication territory which lies east of the Mississippi and north of the Ohio and the Potomac, and you find that there was a slump in that period. For example, the railway operating income for the eastern district, which represents some 59,000 miles of railroad, for the 10 months ending with October, 1916, in round numbers, was \$391,000,000. For the same period in 1917 it was \$329,000,000. There is a difference of some \$62,000,000 less.

When you go to the western district you will find that these earnings, respectively, the net railway operating income for 1916 was \$380,000,000, and for 1917 was \$375,000,000.

The southern district was \$128,000,000 in 1916 and \$136,000,000 in 1917.

The country as a whole was \$899,000,000 for 1916, as against \$835,000,000 for 1917.

Adding the two months that followed, November and December, will not very materially change those figures. It may show some further decrease.

An analysis of that report which was left with you by Mr. Commissioner Anderson will give you the expenditures for maintenance of way and structures, and of equipment, traffic expenses, and transportation expenses. You will find the latter has increased much greater than any other branch of expenses.

It seems to me that you should take that period ending with December 31, 1917, and extend it back as far as you may and you will there obtain a proper yardstick; that you should not consider the necessities of a single section of the country. The earnings of the official classification lines have always been greater than those in the South and West. The volume of tonnage is much greater. Therefore the fact that their earnings have fallen off in a greater degree does not indicate that they are on a lower level than the southern and western lines when you consider the fact that their earnings have been higher, and therefore could come down considerably before they reach the level of the other sections of the country.

On the following page of the bill you have stated the method of computing the net railway operating income for the purposes of this act. You say that it shall be computed from such returns to the Interstate Commerce Commission, excluding, however, debits and credits arising from the accounts called in the monthly returns "leased-road rents" and "miscellaneous rents":

Provided, however, That no Federal taxes in excess of taxes assessed during the year ending June 30, 1917, shall be charged against revenue in computing such standard return.

I assume that the purpose of that provision was to leave to the owners of the railroads the paying of the excess war taxes, but it does not do that. It has just the contrary effect. I may be mistaken about this, but I submit for your consideration this fact. The excess-profits tax, commonly known, I think, as the act of October 3 last, made retroactive to January 1, 1917, the taxes there established, except as to the provision of the 3 per cent tax on freight receipts and 8 per cent on passenger fares, both of which are paid by the shipper or passenger.

Commissioner ANDERSON. Mr. Chairman, perhaps I can save a little time on that by saying that I was a little doubtful about that

language and have changed it. I do not think you are right, but somebody raised that question and I put it in this fashion:

Provided, however, That during the period of such Federal control any Federal taxes in excess of taxes assessed upon any such carrier in force June 30, 1917, shall be charged against or deducted from said standard return.

That puts that beyond the possibility of argument.

Mr. WALTER. I have no doubt, and I have been advised by eminent statisticians who stated that under this proposed act, the carriers could transfer to the Government the burden of the excess tax during 1918, and certainly nobody should be relieved of his share of the burdens of this war.

My suggestion was that you provide as the basis the year ending December 31, 1917, which would make it clear beyond any question that the carriers would have to bear their burden of the excess taxes of the war.

Commissioner ANDERSON. May I make this suggestion, if there is any possible doubt about this. This is the way I have it now:

Provided, however, That during the period of such Federal control any Federal taxes in excess of taxes imposed by laws then in force upon any such carrier during the year ended June 30, 1917, shall be charged against or deducted from said standard return.

That is perfectly plain, is it not?

Mr. WALTER. It is unless some astute legal mind might say that when Congress made it retroactive it was in force and effect.

Commissioner ANDERSON. No. It says, "imposed by laws then in force." I put that in so as to avoid that possibility.

Mr. WALTER. That might cover it. Anyway you will have the thought before you, and with the suggestion of Commissioner Anderson there can be no possible ground of dispute among any of us that none of us want to relieve the carriers from the excess tax of the war.

Now, proceeding to the next sentence, the "net railway operating income in excess of such standard return shall be the property of the United States."

The Director General is authorized to enter into an agreement with carriers that have made from 25 to 150 per cent profit upon their stocks, or upon investments of property, guaranteeing such high returns; yet the carrier that may have had a deficit for the past three years and earned \$10,000 in 1918 must turn that \$10,000 over to the Government. That is not fair. It is not decent treatment. It is not equal treatment before the law.

I submit that you should draw a line and that certain carriers when they reach that line and go beyond should turn the excess over. The bill proposes to make up a deficit for the Louisville & Nashville from 10 per cent to 20 per cent, if it only earns 10; and the bill also proposes that if the Wabash that has not earned a standard return of 2 per cent, and happens to earn 10, shall have that 8 per cent taken away from it and used to help make good the agreement with the Louisville & Nashville; that is not fair. Some provision should be placed in there that will protect the lines that may make something for 1918.

I have in mind a little line in Minnesota that in 1915 lost \$14,000, in 1916 it lost \$38,000, in 1917 it made around \$20,000. This year it

hopes because of a larger tonnage moving over it—the necessity of getting the white pine and the spruce out—will make perhaps \$25,000 to \$30,000. Why would you take away from that line these earnings unless they transcend what are just and reasonable to help make up what the Delaware, Lackawanna & Western averaged in the last three years?

May I call your attention to some figures on that subject and let you know what you are guaranteeing? Take some eastern railroads. The net revenues in 1916 in the eastern district, that is official classification territory, were 45.9 per cent greater than in 1915, while in the western district they were 27.8 per cent greater. Now, the Bessemer & Lake Erie Railroad last year earned 35.16 per cent on its capital stock and over 12 per cent on its so-called property investment, and when I say, "property investment," I mean by that as carried on its books, whether the property is there I do not know. It paid the average dividend of 9.36 per cent last year, the highest average during the past 10 years, except in 1912, when it paid 10 per cent.

The Central Railroad of New Jersey paid 20.74 per cent on its capital stock and paid dividends aggregating 11.68 per cent, the largest in its history except in 1911 when it paid 11.7 per cent, and in 1910 when it paid 11.69 per cent.

The Delaware & Hudson Co. earned 12.63 per cent on its capital stock and paid dividends of 8.82 per cent.

The Delaware, Lackawanna & Western earned 19.55 on its capital stock and 8.52 on its so-called property investment. It paid a dividend of 12.79 per cent, about the same as each of the past 10 years, except 1910 and 1912, when there were extra dividends of large amount.

Passing to the New York Central system, last year it earned 18.24 per cent on its capital stock and 7.59 per cent on its so-called property investment.

Take some of the lines in the southern district, the Alabama Great Southern last year earned 13.03 per cent on its capital stock, and 8.07 per cent on its so-called property investment; it declared a dividend of 7 per cent on its preferred stock and 7 per cent on its common stock, the largest in the last ten years.

The Cincinnati, New Orleans & Texas Pacific last year earned 41.42 per cent on its capital stock, and 25.15 on its so-called property investment, declaring a regular dividend of 6 per cent and an extra dividend of 6 per cent.

The Louisville & Nashville Railroad last year earned 19.5 per cent on its capital stock.

The Chicago, Burlington and Quincy in the western district last year earned 26.93 per cent on its capital stock, and 8.09 per cent on its so-called property investment.

The Union Pacific Railroad Co. last year earned 13.42 per cent on its capital stock and 7.82 per cent on its property investment, paid its regular 4 per cent dividend on preferred stock and 8 per cent on common stock. In 1914 an extra dividend of \$37.50 per share in B. & O. stock and \$3 in cash was declared. Prior to that date, its regular dividend was 10 per cent on common, and subsequent thereto it has been 8 per cent.

I give you those as illustrations of what you are going to guarantee if you adopt this provision, but I submit this great thought that you must treat these railroads fairly; that you must give to the short line railroads, to the long line railroads that have not earned money, the right to earn more than their average until it reaches what is a reasonable amount.

Now, you have further down in the proposed bill the suggestion that during the period of such federal control adequate depreciation and maintenance of the property of the carrier shall be included as a part of the operating expenses, provided through a reserve fund in accordance with such principles and rules as shall be determined by the President.

I would like to call your attention to the use of the word "adequate," that that is a most elastic term; some safeguard should be thrown around the use of that term. You might very well consider since you are guaranteeing a standard return over a period of years whether the average that has been expended for maintenance and depreciation by the respective carriers during that period might not be fair and proper, making due allowance for increased costs of material and of labor that goes into making up the maintenance of these properties, 10 per cent, or 12½ per cent, or something of that sort to be added to the average of the past few years.

I note section 11, which provides that carriers while under federal control shall, in so far as is not inconsistent therewith, or the provisions of this act, or any other act applicable to such federal control, or with any order of the President, be subject to all laws and liabilities as common carriers, and suits may be brought by and against such carriers and judgments rendered as now provided by law with the proviso that except with the consent of the President no attachments shall be levied against the physical property of the road.

Now, that was evidently intended to give to those who had grievances an opportunity to go into court and to proceed with their claims and their law suits. It does not, however, go to what I regard as the most important factor in this question, namely, the preservation of existing forums for disputes between shippers and carriers, and between carriers themselves over the operation in a financial way of rates and regulations affecting rates.

I am perfectly willing to see left to the Director General the operation of these roads. God speed him in his endeavor to open them up and get freight over the roads. There is paralysis to-day in transportation conditions. There is no doubt of that. But let him confine his activities to moving the freight, to getting the motive power, to speeding it on its way, but keep away from him, an already greatly overburdened man, the tremendous responsibility of determining the charges, rules, rates, and regulations affecting charges.

The Interstate Commerce Commission for 30 years has been building up a system, and has to-day the confidence of the people of this country far in excess of that of any other tribunal. If the purposes of taking over the railroads are to move the freight, let that be all that is undertaken.

If, however, the carriers want to get rid of the Interstate Commerce Commission, and those of you who have read the papers for

the past few years and who have been, as Commissioner Anderson told you yesterday, in touch with the facts, know that there has been carried on, and I shall not say without a purpose, an effort to give the wrong impression.

The Interstate Commerce Commission has been fair to these carriers and has been fair to the shippers, has been fair to the public, and I want no twilight zone left in the regulation of these railroads. I would like to have it just as if you and I, Senator, have two houses with an indefinite property line between us. We want our flower gardens, our places for our children to play, and we want the line drawn between us so that you may know where your property is and your rights end and I may know where mine end.

So I submit that in your legislation you should draw a line that gives to the Director General and his advisers a complete chart of their powers, and place upon him and them certain definite responsibilities, and give to the Interstate Commerce Commission the rights which it should have, and leave upon it the powers and responsibilities of the act to regulate commerce. For this purpose I have drawn a little suggestion in the way of an amendment. It may go too far; it may not go far enough. But it has in mind that all the acts of Congress of the 30 years past shall be left in full force and effect, and qualified only as to the operation of these railroads:

Nothing in this Act contained and nothing in the Act of August 29, 1916, entitled "An Act making appropriations for the support of the Army for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes," shall be construed as repealing or amending the Act to Regulate Commerce, approved February fourth, eighteen hundred and eighty-seven, and specific amendments thereto; that said Act to Regulate Commerce, as specifically amended, shall remain in full force and effect; *Provided*, That the right of the shipper to select the route of his shipment may be subject to the order of the Director General of Railroads in designating the intermediate carriers who shall transport such shipment to the delivering carrier.

What I have in mind is this: Under the existing law the shipper may fix the route of the highway all the way through. I would give to the Director General the right to say to the shipper, if he thinks it advisable, "Load your freight. I will say over what route it shall go, as I know what is congested and what is not, until it reaches the destination, and there it shall be turned over to the delivering carrier you desire."

Why do I say that? Because the consignee is located on a particular line of railroad and he wants the freight at his unloading dock. The oil receivers have their tanks and they have their pipes leading out to the car. The mill man has his side track, and bear in mind that all of the great terminals of the country have been built by the shippers. They have constructed the tracks upon which the cars may be placed for unloading, and it is only fair to let the shipper name the delivering carrier. I submit that it will tend to the freest movement of the freight because each man's freight will be delivered on his own terminals, but let the Director General move, if he thinks necessary, that car as a pawn on the chess board via any intersection or junction that he may desire.

The great principle is: Leave to the commission the right to determine the compensation to the carriers. That is the proper essential thing to do. You gentlemen must know that you cannot guess

at what is just compensation. You must have a very multitude of facts before you. The Director General has other things to do besides determining whether the rate on pig iron from Bessemer, Ala., to the manufacturing centers shall be 19 cents or 20 cents. He has something else to do. Of course he might delegate it to his assistants, but where could he go in all this broad land to find better assistants, more proficient, more expert, than the members of the Interstate Commerce Commission. Leave it to that commission to determine. True, he may call other advisers. He has called other advisers. You may call the roll of his advisers and you will find answering the men who have been operating these railroads, the men who have been clamoring for increases in rates.

Would it not be better, may I suggest with all respect, that the Interstate Commerce Commission should determine these matters? If, however, they are going to be left to the Director General, might he not very properly call in members of the commission as his advisers or representatives of the great shipping and consuming public who can give him both sides of a proposition that has been debated for years and years.

A little illustration: The demurrage rules of the United States have been in effect for several years, with their rates, rules, and regulations. They have been worked out by the best brains of the National Industrial Traffic League, representing the shippers, and the Committee on Relations Between Railroads of the American Railway Association, and with the cooperation of the Interstate Commerce Commission.

The great purpose has been to prescribe rules and regulations to prevent undue detention of the cars when they are being loaded, or when they are being unloaded. No changes were to be made in those rules except after a conference between the carriers and the shippers. Somebody advised the Director General that they ought to be changed and wiped out, and a progressive scale of demurrage put in effect. Shippers are not objecting to the charges. They are perfectly willing to pay whatever is just and reasonable, but a progressive scale brings upon the carriers, as the operating men and the traffic men and the accounting men will tell you, great burdens that are not present now under the average agreement, or the bunching rule.

The one effect, the experts will tell you, of the change which the Director General asked the Interstate Commerce Commission to put into effect, and which goes into effect on the 21st, without the knowledge of the shippers at all, or any effort to get any facts from them, will be to put great burdens upon the carriers in the way of accounting and increased clerical force, at a time when man power is at a limit, and to saddle upon the shippers of the country costs which will do nothing toward expediting the movement of the cars.

So I am asking you, with all the power that I can summon, to leave to the Interstate Commerce Commission the purposes for which it was organized, and unimpaired powers to accomplish those purposes. You have not given the commission control over the operation of the railroads. That has been left free. For the first time, the Director General steps into a power which has not been conferred heretofore. So leave him with the operation of the rail-

roads, but leave to the commission its powers under the Interstate Commerce act to determine what shall be just and reasonable.

In section 12 you provide for a penalty, which leaves it to discretion to punish by fine or imprisonment. I should say that at this time of national peril that if anybody steps in the way of the lawful exercise of power by the Director General, or by his assistants, that he ought to go to jail, and that no fine should be placed on him. Let there be no slackers in any part of the transportation system under the penalties of law. What is the mere penalty of a fine? Let every man put his shoulder to the wheel, and if he does not do it, be punished or broken on the wheel.

Now we come to another proposition that I would like to submit to you, and that is this: You took these railroads over almost in a single night. You had then a movement of freight which would take months to reach its destination. You had all sorts of conflicts; no notice was given. Why can you not turn those railroads back just as soon as the emergency has passed? Give them back to their owners and let them have them just as quick as the operation is cleaned up, whether the war is over or not. When the proclamation of peace has been given, let us say that 30 days thereafter, or 60 days thereafter, the railroads shall go back into their owners' hands. It is only a question of accounting. You can easily, with expert assistance, determine what are the rights as of a particular date.

None of us can tell what the situation is going to be when that time comes, but I think it will contribute to a clarification of what now is a confusion in transportation, and confusion in the minds of business men everywhere. No man can tell to-day whether to-morrow he is going to be able to engage in his lawful business or not. He does not know what is going to happen. Let us, just as fast as we can, contribute to removing that indecision and that confusion, and I would suggest that you should, in section 13, provide, "shall continue for, and during the period of the war, and until 30 days or 60 days thereafter."

I think this covers the suggestions which I desire to present to you. The difficulties which have brought about the existing situation have been very well summed up by the Interstate Commerce Commission in its car supply investigation report, 42 I. C. C., 657. You will find some exhibits attached thereto which throw a tremendous light upon the conditions which led up to the necessity for taking possession and control of these roads, and I would like to file that report as a part of my remarks, and if you can find the time, or if some of your assistants can find time to go through that small pamphlet and note the situation which the commission found, it will help you greatly to determine where some of the fault lay.

(The decision referred to is here printed in full, as follows:)

No. 9284.
CAR SUPPLY INVESTIGATION.

Submitted December 28, 1916. Decided January 18, 1917.

1. Car service rules of respondents, in so far as they relate to open-top coal and coke cars and to railroad owned or controlled refrigerator, heater, ventilated and insulated cars, found unreasonable to the extent that they differ from the car service rules herein prescribed.
2. Action with regard to car service rules for application to other classes of equipment deferred pending appointment by executives of a committee, vested with plenary power, to cooperate with this Commission at Washington in securing a more equitable distribution of equipment.

J. V. Norman and *J. H. Townshend* for Southern Hardwood Traffic Association, and other associations.

Francis B. James, Clarence B. Hewes, D. C. Wood, G. D. Wood, and *K. U. Meguire* for Southern Appalachian Coal Operators' Association.

J. V. Norman, F. B. Montgomery, J. S. Brown, Charles Rippin, J. S. Marvin, F. T. Bentley, D. F. Hurd, and *J. E. Wilson* for National Industrial Traffic League.

E. F. Morgan and *E. E. Winters* for Public Service Commission of West Virginia.

R. G. Phillips for International Apple Shippers' Association.

W. A. Clark for New England Industries' Demurrage Bureau.

J. S. Marvin for National Automobile Chamber of Commerce.

John M. Pritchard for Gum Lumber Manufacturers' Association.

Thomas B. Moore for Michigan Manufacturers' Association, Wabash Portland Cement Company, and other companies.

E. C. Nettles for Chamber of Commerce of Battle Creek and of Jackson, Mich.

John C. Brinkley and *John C. Graham* for Chamber of Commerce of Jackson, Mich., Consumers Power Company, and Michigan Light Company.

James L. Davidson, M. W. Bush, Horace Hammond, Harry Knight, M. J. Maloney, and *C. A. Bryan* for Alabama Coal Operators' Association, Chamber of Commerce of Birmingham, Ala., Imperial Coal & Coke Company, and other companies.

A. G. T. Moore for Southern Pine Association.

42 I. C. C.

H. J. Campbell and *J. S. Brown* for Board of Trade of the city of Chicago.

W. L. Andrews for Consolidated Coal Company, Incorporated.

J. Keavy for Chamber of Commerce of Indianapolis, Ind.

G. F. Thomas for Arkansas Soft Pine Bureau.

George J. Bolender for Chamber of Commerce of Kalamazoo, Mich.

C. P. White for Pittsburgh Vein Operators' Association of Ohio.

C. S. Paisley and *Robert Buko* for Valley Camp Coal Company.

Louis B. Wehle and *John J. Telford* for Louisville Board of Trade.

D. F. Hurd for Chamber of Commerce of Cleveland, Ohio.

J. E. Wilson for Chamber of Commerce of Youngstown, Ohio.

M. F. Gallagher and *E. P. Wilkinson* for all coal operators on Chicago & Eastern Illinois Railroad, Cincinnati, Hamilton & Dayton Railroad, and Chicago, Terre Haute & Southeastern Railroad in Indiana.

E. E. Eversull for W. T. Ferguson Lumber Company of St. Louis.

C. H. Rodehaver for various lumber shippers.

Harry J. Hood for Detroit City Gas Company.

F. E. Reeves for Detroit Coal Exchange.

Wm. H. McCloud for Buick Motor Company.

E. M. Peterson, *J. B. Forest*, *Donald McDonald*, *Fred S. Bell*, *A. L. Wilkinson*, *Walter Colyer*, and *R. R. Fauntleroy* for various public utility and manufacturing companies.

George Stuart Patterson and *C. C. Paulding* for Executive Committee of the American Railway Association.

C. B. Heiserman and *J. W. Roberts* for Pennsylvania system.

C. P. Stewart for Cleveland, Cincinnati, Chicago & St. Louis Railway Company, Cincinnati Northern Railroad Company, and Wheeling & Lake Erie Railroad Company.

R. Walton Moore, *William M. Bullitt*, *D. E. Spangler*, and *S. S. Bridgers* for Norfolk & Western Railway Company.

William A. Northcutt, *C. B. Phelps*, and *J. A. Ridgely* for Louisville & Nashville Railroad Company.

Charles S. Belsterling for Bessemer & Lake Erie Railroad Company, Union Railroad Company, and Elgin, Joliet & Eastern Railroad Company.

C. H. Markham, *R. V. Fletcher*, *H. R. Newlean*, *W. L. Park*, and *J. F. Porterfield* for Illinois Central Railroad Company.

R. B. Scott and *W. L. Barnes* for Chicago, Burlington & Quincy Railroad Company.

B. I. Spock for New York, New Haven & Hartford Railroad Company, Boston & Maine Railroad, and Bangor & Aroostook Railroad Company.

T. H. Burgess for Erie, Chicago & Erie, New York, Susquehanna & Western, and New Jersey & New York railroad companies.

Wallace T. Hughes, *J. L. Goree*, and *N. D. Ballentine* for Rock Island lines.

R. Walton Moore and *E. C. Blanchard* for Seaboard Air Line Railway, and other southern carriers.

Thomas Bond and *J. H. Doggrell* for St. Louis & San Francisco Railroad Company.

C. C. Paulding, *Parker McCollester*, *L. N. Alexander*, and *H. J. Merrick* for New York Central lines.

William A. Eggers, *C. W. Galloway*, *C. L. Thomas*, *William A. Parker*, *C. S. Wright*, *J. R. Kearney*, *W. G. Curren*, and *S. T. McLaughlin* for Baltimore & Ohio system lines and Cincinnati, Hamilton & Dayton Railway Company.

William F. Peter for Chicago, Terre Haute & Southeastern Railway Company.

W. A. Cole and *W. C. Kendall* for Boston & Maine Railroad.

C. B. Stroh for Atchison, Topeka & Santa Fe Railway Company.

M. Nicholson for Great Northern Railway Company.

H. G. Herbel and *J. A. Somerville* for Missouri Pacific-Iron Mountain Railway system.

J. H. Rightmeyer for Kentucky & Indiana Terminal Railroad.

C. P. Stewart and *C. H. Bieber* for Michigan Central Railroad Company.

J. W. Merrow for Coal & Coke Railway Company.

J. M. Ferguson for Carolina, Clinchfield & Ohio Railway.

P. H. McCauley for Northern Pacific Railway Company.

J. T. Bougher for Central Railroad Company of New Jersey.

O. F. Clark for Grand Trunk Western Railway Company.

J. T. Bougher and *O. W. Stager* for Philadelphia & Reading Railway Company.

Alex. P. Humphrey for Southern Railway Company and Kentucky & Indiana Terminal Railroad.

R. L. McKellar and *B. G. Fallis* for Southern Railway Company.

Bird M. Robinson for Tennessee Railway Company.

F. B. Brown, *Frank H. Alfred*, and *H. O. Halsted* for Pere Marquette Railroad Company.

M. B. Casey for Delaware, Lackawanna & Western Railroad Company.

W. C. Ranous for Minneapolis, St. Paul & Sault Ste. Marie Railway Company.

J. B. Heafer for International & Great Northern Railway Company.

N. D. Ballantine for El Paso & Southwestern Company.

Edward E. Kerwin for Minneapolis & St. Louis Railroad Company.

W. A. Collie for New York, Chicago & St. Louis Railroad Company.

J. P. Stevens, *Henry Taylor, jr.*, and *E. P. Goodwin* for Chesapeake & Ohio Railway Company.

Henry J. Hart for Bangor & Aroostook Railroad Company.

J. S. Leeds for Santa Fe Refrigerator Despatch Company.

Nathan L. Miller and *Fred S. Stow* for Delray Connecting Railroad Company.

G. J. McPherson for Toledo, St. Louis & Western Railroad Company.

L. A. Brown for Chicago Great Western Railroad Company.

G. W. Thompson for Detroit, Toledo & Ironton Railroad Company.

C. P. Torrey for Hocking Valley Railroad Company.

F. B. Barr for Wheeling & Lake Erie Railroad Company.

J. E. Fairhead for Kansas City Southern Railway Company.

E. B. Kennedy for Detroit Terminal Railroad Company.

T. H. Hervey for Ann Arbor Railroad Company.

W. L. Barnes for Northern Pacific Railway Company and Colorado & Southern Railway Company.

W. C. Steffa for Chicago & Alton Railroad Company.

E. B. Woodmanse and *B. I. Forsythe* for Missouri, Kansas & Texas lines.

C. L. Wallace for Texas & Pacific Railway Company.

C. E. Lytle for Duluth, South Shore & Atlantic Railway Company and Mineral Range Railroad Company.

J. K. Fahey for Gulf & Ship Island Railroad Company.

B. F. Kirkland for Georgia & Florida Railway.

A. L. Christiansen for Elgin, Joliet & Eastern Railway Company.

V. P. Turnburke for Chicago, Milwaukee & St. Paul Railway Company.

W. E. Chambers for Louisville, Henderson & St. Louis Railway Company.

W. E. Farris for New Orleans Great Northern Railway Company.

E. W. Sandwich for Atlanta & West Point Railroad Company, Western Railway Company of Alabama, and Georgia Railroad.

C. E. Hix for Seaboard Air Line Railway.

Charles A. Vilas and *E. E. Betts* for Chicago & North Western Railway Company.

A. S. Wright for Lehigh Valley Railroad Company.

J. W. Smith for Western Maryland Railway Company.

G. W. Kirtley for Erie Railroad Company.

E. H. De Groot, jr., and *C. B. Cardy* for Chicago & Eastern Illinois Railroad Company.

Grant W. Taylor for Southern Railway Company, Mobile & Ohio Railroad Company, and other companies.

O. C. Castle for Southern Pacific system lines.

J. T. King, *W. E. Kay*, and *S. A. Stockard* for Atlantic Coast Line Railroad Company.

L. A. Anthony for Boston & Albany Railroad Company.

Fitzgerald Hall, E. M. Werner, and E. M. Wrenne for Nashville, Chattanooga & St. Louis Railway.

D. I. Forsyth for Wabash Railway Company.

John C. Doolan, E. F. Trabue, and W. H. Newman for Chicago, Indianapolis & Louisville Railroad Company.

William Mosby and J. M. Herbert for St. Louis Southwestern lines.

H. G. Sargent for New Orleans & Northeastern Railroad Company, Alabama, Vicksburg Railway Company, and Vicksburg, Shreveport & Pacific Railway Company.

R. K. Smith for Mississippi Central Railroad Company.

A. F. Currier and A. R. Whaley for New York, New Haven & Hartford Railroad Company and Central New England Railway Company.

C. P. Stewart and F. G. Minnick for Wheeling & Lake Erie Railroad Company.

William Bartley for Lake Erie & Western Railroad Company.

J. W. Trueb for Vandalia Railroad Company.

F. C. Welch for Grand Rapids & Indiana Railway Company.

Edson Rich and William Whitney for the Union Pacific system.

REPORT OF THE COMMISSION.

McCHORD, Commissioner:

The present conditions of car distribution throughout the United States have no parallel in our history. In some territories the railroads have furnished but a small part of the cars necessary for the transportation of staple articles of commerce, such as coal, grain, lumber, fruits, and vegetables. In consequence mills have shut down, prices have advanced, perishable articles of great value have been destroyed, and hundreds of carloads of food products have been delayed in reaching their natural markets. In other territories there have been so many cars on the lines of the carriers and in their terminals that transportation service has been thrown into unprecedented confusion, long delays in transit have been the rule rather than the exception, and the operation of established industrial activities has been made uncertain and difficult. These conditions have made necessary a far-reaching investigation by the Commission and now urgently demand prompt, decisive action.

In response to many complaints from all parts of the country, the Commission, upon its own motion, on November 4, 1916, entered upon a general investigation covering all sections of the United States "concerning the supply, exchange, interchange, and return of freight cars, and all rules, regulations, and practices relating thereto," with a view of issuing such order or orders as the Commission might deem appropriate. A hearing was held at Louisville, Ky., and witnesses

representing substantially all of the principal carriers of the country were examined with reference to their supply and use of freight cars. Evidence on the part of shippers and consignees was also taken. It is not our purpose at this time to review in detail the facts which were developed of record. For present purposes it is sufficient to state that for some time prior to the Commission's investigation there had been a general misuse of freight cars by substantially all of the respondent carriers. The substance of these misuses was the failure to observe the then effective car service rules 1, 2, 3, and 4, which provide for the return of cars to the owning roads, stated in Exhibit A of the appendix, adopted by the American Railway Association, whose members include all of the principal carriers of the United States subject to the act. The failure to observe these rules became a common practice as the volume of traffic increased during the past few months. Cars received for a line haul by foreign carriers were used for continuous local service on those lines and those received for switch movements received the same usage. These practices were frankly admitted by substantially all carriers, and while on behalf of some lines a desire to observe car service rules was expressed, it was stated that they could not do so unless other lines would also conform to those rules. The misuses of equipment resulted in depriving the owning lines of cars which they had provided for the transportation of coal, grain, perishable commodities, and other articles, in diverting such cars from the normal channels to the transportation of other commodities in other territories, in reducing in large measure the ability of certain carriers to serve the shippers and consignees of freight located on their lines and the lines of their connections, and in denying to many shippers and consignees such transportation facilities as were necessary to them and such as they would have received if freight cars had been handled in accordance with car service rules. Embargoes were placed by some lines against the movement of their own coal cars beyond their rails, for which they gave the explanation that such measures were necessary in order to retain on their own lines sufficient coal cars to serve the communities dependent on them for fuel—a practice which had been held unlawful in *Missouri & Illinois Coal Co. v. I. C. R. R. Co.*, 22 I. C. C., 39, to which further reference will be made.

Following the disclosure of these and other facts of record, and on November 14, 1916, while the hearing was still in progress, the carriers were requested by the presiding Commissioner to return foreign open-top cars and refrigerator cars to the owning lines, either loaded or empty, without delay. To this request all of the carriers which were represented at the hearing gave their assent and filed severally their instructions for such return of these cars. At the hearing the car-

riers were requested to lift the embargoes which had been placed against the movement of their coal cars beyond their rails.

During the progress of the investigation it was suggested to the carriers that prompt action be taken by their executives to relieve the deplorable conditions found to exist. In response to this suggestion, at a meeting of the American Railway Association on November 15 a conference committee on car efficiency,¹ hereinafter called the car efficiency committee, was created "to sit constantly in Washington, to deal with the car situation." That committee and the car service commission of the American Railway Association, the latter being hereinafter referred to as the car service committee, went to Louisville and held an informal conference with the presiding Commissioner. There were present, representing the carriers in addition to counsel, the following: C. H. Markham, president of the Illinois Central; W. G. Besler, president of the Central Railroad of New Jersey; E. J. Pearson, vice president of the New York, New Haven & Hartford; W. L. Park, vice president of the Illinois Central; G. L. Peck, vice president of the Pennsylvania lines west; C. M. Sheaffer, general superintendent of transportation of the Pennsylvania Railroad lines east; W. R. Scott, vice president and general manager of the Southern Pacific; H. E. Byram, vice president of the Chicago, Burlington & Quincy; George Hodges, chairman of the committee on relations between railroads of the American Railway Association. At this conference, with reference to the creation of the car efficiency committee, Mr. Markham read a statement in which, among other things, it was said:

The American Railway Association has delegated full authority to this committee to handle the car interchange question. We propose to increase the per diem charges on December 1, on which date we expect the proposed increase in demurrage charges will go into effect. We also propose to put into effect penalties for diversion of and delays to equipment on January 1, the earliest practicable date.

This committee took up its work in Washington and among its first acts were directions for the return of open-top cars and fruit refrigerator and heater cars to the owning lines, as shown by circulars No. 1750, issued November 23, 1916, and No. 1752, issued November 24, 1916, through the general secretary of the American Railway Association. These are as follows:

CIRCULAR NO. 1750.

On account of the acute shortage of open cars in certain sections of the country, Commissioner McChord on November 14 issued a direction to all railroads requiring the return of such foreign cars to their owners, loaded or empty.

¹ This committee consisted of George Hodges, chairman; C. M. Sheaffer, general superintendent of transportation of the Pennsylvania Railroad lines east; E. J. Pearson, vice president the New York, New Haven & Hartford; W. A. Worthington, vice president of the Southern Pacific; W. L. Park, vice president of the Illinois Central; and E. H. Coapman, vice president of the Southern Railway.

It is the opinion of the conference committee on car efficiency that this course should be followed by all railroads, regardless of car balances. It is therefore requested that until further advised:

- All foreign open-top cars be at once returned to their owners, either loaded or empty;
- (A) direct, if belonging to direct connections.
- (B) through the proper home route, if belonging to other than direct connections.

CIRCULAR NO. 1752.

There has developed in various sections of the country an acute shortage of fruit refrigerator and heater cars to move perishable traffic, which, on account of weather conditions, can only be transported in such equipment.

To relieve this critical situation, the conference committee on car efficiency requests that all railroads take immediate steps to facilitate the prompt return of such cars to the home territory.

On December 1, 1916, the car efficiency committee took action with reference to the relocation of box cars, which was announced to the members of the American Railway Association in circular No. 1762, reading in part as follows:

In circular issued November 29, you were advised that certain sections of the country are suffering greatly from shortage of box cars, and immediate relief must be secured.

This shortage is caused by a deficiency in box-car equipment in all sections of the country, except in central freight, trunk line, and New England territories. Ordinary means will not remedy the situation; emergency measures are necessary.

To this end it is directed:

That lines in the territories named below shall forthwith, and until further notice, deliver to their western and southern connections a percentage of box cars, either loaded or empty, in excess of those received from such connections, as shown by the percentages below:

	Per cent.
Railroads in group 1, having box cars on their line in excess of number owned..	30
All railroads in groups 2 and 3, regardless of number of box cars on line.....	20
All railroads in group 5, regardless of number of box cars on line.....	10
All railroads in group 6, regardless of number of box cars on line.....	20
All railroads in group 7, regardless of number of box cars on line.....	15
All railroads in group 8, regardless of number of box cars on line.....	10

NOTE.—Groupings in accordance with car shortage and surplus statements issued by American Railway Association.

The principal carriers composing the stated groups are named in Exhibit B of the appendix, which also shows the percentage on certain dates of (a) all freight cars, (b) box cars, (c) gondola coal and coke cars, on the lines of the several carriers to the cars of those classes owned.

In spite of the efforts which had been made to put a stop to the diversion and misuse of foreign refrigerator cars and coal cars the Commission's inspectors day after day reported numerous instances of such diversion and misuse. Similar reports were made to the Commission by a number of individual carriers. It appeared that the car efficiency committee was not securing obedience to its direc-

tions, and, on December 4, 1916, the following telegram was sent to Mr. Markham:

WASHINGTON, D. C., December 4, 1916.

C. H. MARKHAM,

President Illinois Central Railroad Company, Chicago, Ill.:

I have brought all of the matters connected with the car shortage investigation to the attention of the Commission, including the efforts made by the conference committee. Based upon my report to the Commission and its knowledge of the situation, I am requested by the Commission to say that it is disappointed in the progress made by the conference committee on car efficiency. So many misuses of equipment have been brought to the Commission's attention that it can not feel that the order to return such equipment to owning lines promptly is being obeyed. There also seems to be doubt about the committee's power. Carriers are not responding to the committee's request for information as they should and cars continue to increase upon various lines. Something must be done at once to relieve the situation. We believe the present conditions can be promptly relieved if vigorous action is taken. Unless the conference committee is given sufficient power and uses it without hesitation in its cooperation with this Commission, and unless the individual carriers obey their orders, no good results can be obtained by such cooperation.

C. C. McCHORD.

This resulted in the following interchange of telegrams:

DECEMBER 4, 1916.

C. C. McCHORD, *Washington, D. C.:*

Wire date. I am heartily in accord with everything you say in regard to returning cars. There is no improvement in our condition. We own 62,595 commercial cars. October 31 there were 51,828 commercial cars on our line, or approximately 83 per cent of ownership. November 15 there were 51,419, and November 29, 51,389, a decrease of 439 compared with October 31 and 30 compared with November 15. Situation our shippers simply desperate. Some of our people doing big business owing to lack of cars are forced to borrow money to protect pay rolls when according to sales they should have handsome bank account. Connections having our cars, regarding which you have complete record, are not returning them. We are and will continue to furnish all data desired. I appeal to you to force lines having 11,206 excess cars belonging to us to return them at once.

C. H. MARKHAM.

WASHINGTON, December 5, 1916.

C. H. MARKHAM,

President Illinois Central Railroad Company, Chicago, Ill.:

Your wire received refers to conditions on Illinois Central, with which we are familiar through reports received and which are also true of other lines. I wired you as chairman of executive committee which conferred with me at Louisville and which I was informed was delegated for that purpose by action of all executives selected from the five sections of the country pursuant to the plan agreed upon in my first conference with you at Louisville. Sufficient time has elapsed since the proclamation at Louisville, followed by a similar order by the committee when it convened here, requiring the return of open-top cars to have substantially bettered condition of owning lines in this respect and to have returned open-top cars to their normal and proper uses. While some lines have obeyed that direction it is apparent that other lines have not done so. Percentages of open-top equipment on owning lines and inspectors' reports to Hodges amply demonstrate that fact. A similar fate has been met by the committee's proclamation of October 28 respecting the relocation of closed equipment. This Commission understood that the conference committee on car efficiency was

vested with full authority to require the movement and relocation of cars by all railroads. If they have not already done so we feel that executives should define this committee's powers at once and inform the Commission of its authority. Otherwise obedience by some lines to directions to return cars and disobedience by others will only work hardship without securing adequate and substantial relief. If this is not to be dealt with by the executives in such a manner that no railroad will misuse equipment or disobey directions, given by the committee, this Commission desires to be advised of that fact.

C. C. McCHORD.

CHICAGO, ILL., December 6, 1916.

Hon. C. C. McCHORD,

Interstate Commerce Commission, Washington, D. C.:

Your telegram fifth. My position as chairman of committee was but temporary and for purpose of carrying out understanding with you. Mr. Park has been attending meeting executive committee American Railway Association in New York and wires that the conference committee sitting in Washington has been endowed with full authority along lines suggested by Interstate Commerce Commission. The increase in per diem agreed on and progressive demurrage will have beneficial effect on car efficiency.

C. H. MARKHAM.

A meeting of the executive committee of the American Railway Association was held in New York on December 5, 1916. On that date, in order that that committee might have a full understanding of the Commission's position, a telegram was sent to George Hodges then at New York City, repeating in full the second and third telegrams above quoted. At that meeting the work of the car efficiency committee was delegated to the car service committee, which, as reconstituted, consisted of Messrs. Park, Pearson, Sheaffer, Worthington, and Fairfax Harrison, president of the Southern Railway, its chairman, by whom the following statement was submitted to us, defining the powers of the car service committee:

The powers of the commission on car service are defined by the amended per diem and car service rules as set forth in A. R. A. circular No. 1751, of which a copy is submitted herewith. In addition, by special vote of the American Railway Association, the commission on car service is authorized to add to or modify the existing rules with the approval of the executive committee of the American Railway Association. A copy of this resolution, as set forth in said circular No. 1751, is also submitted herewith.

Prior to the meeting of the American Railway Association at which the present rules were adopted a representative meeting of executives of many railroads was held at which those present pledged themselves to give effect to the rules and support the commission on car service in the performance of its duties.

In compliance with the request of Commissioner McChord that a committee representing the railways cooperate with the Interstate Commerce Commission in an effort to relieve the car shortage which exists in certain parts of the country the executive committee of the American Railway Association has authorized the commission on car service to sit in Washington with a representative of the Interstate Commerce Commission and to make such extraordinary recommendations to the roads as in its judgment would meet the necessities of the present emergency.

The commission on car service will depend for the enforcement of such recommendations upon the substantial good faith of the carriers which assented to its crea-

tion and to its performance of the duties outlined above. To assure this the commission on car service is prepared to utilize the force of public opinion which it feels it has behind it.

On December 15 the car service committee issued its circular No. 3, set forth as Exhibit C of the appendix, which amended and interpreted circular No. 1762. Among other things this circular made the following reference to carriers in group 4:

Whenever roads in group 4 not covered by American Railway Association circular No. 1762, are in possession of their ownership of box cars, they are expected to help their western and southern connections which have deficiencies by delivering to them a 20 per cent excess of box cars above the number received.

The record before us, as well as the numerous complaints received by the Commission daily from certain sections of the country, shows that the present car shortage conditions are serious and require immediate relief. The supply of coal in many communities is inadequate, and the prices demanded are very high. Public service companies, which furnish light, heat, and power to cities and towns, face a possible interruption of this indispensable service through lack of fuel. At the time of the hearing some of the carriers themselves had but two or three days' supply of coal, others had entirely exhausted their stored supply and were dependent upon the daily movement of loaded coal cars for their motive power. Commercial coal was being confiscated for this purpose, with its resultant loss of immediate supply to the intended consignees. In the event of severely cold weather which every winter brings, a continuation of present conditions will inevitably cause hardship and suffering.

The need of restoring to their proper uses railroad owned or controlled refrigerator cars and heater, ventilated, and insulated cars is not less urgent. Lack of timely and adequate supply of cars suitable for such service has already caused severe losses. A large proportion of those classes of cars have left the rails of certain originating carriers and although some are being returned, their home movement is slow, while others are used for the local movement of dead freight on foreign lines. The misuse of foreign refrigerator cars has continued notwithstanding the directions for their return to the owning lines. In this connection we quote the following letter recently addressed to the Commission by the superintendent of transportation of the Northern Pacific Railway Company and made a part of this record:

ST. PAUL, MINN., *December 23, 1916.*

Referring to movement of refrigerators: We found N. P. 95393 at the Updike Elevator, C. & N. W. tracks in Milwaukee, Wis., loaded with grain. N. P. 95953 was with it, also loaded with grain. Following is record of these two cars since they left our line: 95393, to C., M. & St. P. at Minn. Tfr. 8-13-15, I. H. B. 8-15, N. Y. C. & St. L. 8-15, Wab. 8-17, N. Y. C. & St. L. 8-23, Pa. R. R. 9-18, N. Y. C. & St. L. 9-29, C. H. D., L. & N. 10-9, Pa. Ry. Term. 10-12, L. & N. 10-15, V. & S. W. 10-22, Ironton 10-27,

L. & N. 10-29, Interstate 11-22, L. & N. 11-24, L. H. St. L. 12-31, L. & N. 1-3-16, C. C. C. & St. L. 1-23, L. & N. 1-28, N. & W., L. & N. 2-18, Pa. Co. 3-13, Pa. R. R. 3-14, Pa. Co. 4-3, L. & N. 4-15, N. & W. 4-19, C. C. O. 4-20, L. & N. 5-5, C. C. O. 5-10, N. & W. 5-16, L. & N. 5-17, N. & W. 5-26, L. & N. 6-3, C. H. D. 6-7, L. & N. 6-28, C. H. D. 7-5, C. & O. 7-15, Big Four 7-20, C. & O. 7-31, L. & N. 8-18, B. & O. 8-19, C. & O. 8-25, Big Four 10-2, C. & O. 10-8, C. H. D. 10-17, C. & O. 10-17, N. & W. C. C. C. & St. L. 12-3.

95953 to C. St. P. M. & O. at Minn. Transfer 11-15-16, C. & N. W. 11-18, Omaha 12-13.

You will note how some lines handle refrigerator cars.

Yours, truly,

P. H. McCauley, *Supt. Transportation.*

On many southern and western lines the available supply of box cars is but a fractional part of those which would be required to move the traffic offered. The flow of traffic northbound and eastbound has carried box cars from the originating lines into central freight association, trunk line, and New England territories. At many points in these territories there are large accumulations of cars due to many causes, such as the unprecedented traffic, lack of adequate yard, trackage, warehouse and elevator facilities, insufficient motive power, inefficient operation, lack of ocean-carrying space, the holding of cars by shippers and consignees for speculative purposes, and the failure of consignees to unload promptly. The result is slow movement and disorganized service, conditions to which a reduction in the number of cars on line would give relief.

Urgent as is the need of relief for these conditions the respondents, with but few exceptions, have failed to afford such relief. They have assured the Commission that they would put a stop to the diversion and misuse of foreign open-top cars and refrigerator cars, and would return those cars to their owners without delay, but since that assurance was given hundreds of instances of diversion and misuse have been called to our attention by owning lines and by our inspectors. While there has been some response on the part of some carriers to the Commission's efforts to restore cars suitable for the transportation of coal and perishable products to their proper channels, it is apparent that there is still a general misuse of such equipment. We have received many appeals not only from shippers but from carriers for the entry of a formal order to remedy the situation. For the purpose of affording the carriers an opportunity to be heard upon the question, the respondents were ordered to show cause on December 28, 1916—

why an order should not be entered requiring respondents to return to their owners, without diversion or misuse, all foreign open-top cars and all railroad owned or controlled refrigerator, heater, ventilated, and insulated cars after being unloaded at destination, either loaded or empty (a) direct, if belonging to direct connections, (b) through the proper home route if belonging to other than direct connections; or in accordance with such other rules as may be found reasonable and be prescribed;

And to return all other foreign freight cars to their owners in accordance with car service rules 1, 2, 3, and 4 of the American Railway Association or to effect a relocation of such cars in accordance with such other rules as may be found reasonable and be prescribed.

At the hearing on this order further testimony was taken and there was some argumentative discussion of the issues before us. The car service committee asks that no car service rules be prescribed by order prior to March 1, 1917. When analyzed, the reasons stated for opposing the entry of an order at this time prescribing such rules are (1) that the code of car service rules now in effect is practically new, and, on experience, may require amendment; (2) that a prompter movement of cars in the future may be expected by reason of the per diem increase from 45 cents to 75 cents, the progressive demurrage charges recently made effective, and the application on January 1, 1917, of the diversion penalty (see Exhibit A, appendix) to open-top cars and refrigerator cars, and on March 1, 1917, to all other cars; (3) that the code of car service rules can not be applied to box cars consistently with the directions which have been given by the car service committee for the distribution of box cars without regard to ownership; (4) that the code of car service rules is not sufficiently flexible to provide for peculiar and difficult situations which may arise; (5) that the penalty of \$5,000 provided in section 16 of the act for a violation of an order of the Commission made under section 15, is wholly disproportionate to the offense of diverting a single car. We find these reasons wholly unconvincing in so far as they refer to open-top coal cars and refrigerator cars. It is true that the present code of car service rules appears to require some amendment. But the entry of an order by the Commission would not preclude the further modification or revision of those rules upon a proper showing of reasonable necessity therefor. Likewise the anticipated prompter movement of cars presents no sufficient reason for withholding an order, especially in view of the fact that on January 13, 1917, the diversion penalty was entirely removed, as shown by the following resolution of the car service committee:

Diversion penalty now in effect on all cars except box cars including automobile and furniture cars has been postponed until further notice, this postponement being retroactive from January 1, 1917.

The increased per diem and the progressive demurrage charges may to some extent facilitate the movement of equipment, but they are unlikely to prevent the diversion and misuse of cars at a time when the demands for transportation are so great. In any event they are factors consistent with an order for the observance of reasonable car service rules and which, to the extent that they are effective, would promote such observance. Should the request of the car service committee that no order be entered prior to March 1, 1917, be granted, the

winter months will have passed without such relief as an order can afford.

The executive committee of the American Railway Association also appeared in opposition to the entry of an order at this time, but the testimony given in behalf of that committee added nothing material to the objection of the car service committee above referred to. Certain respondents, notably the Louisville & Nashville, the Chicago, Burlington & Quincy, and the Northern Pacific, expressed the desire that an order be entered.

In opposing the entry of an order requiring the return of box cars to the owning roads, the car service committee points out that in its efforts to secure a relocation of such cars the ownership principle has been wholly disregarded. The requirement that box cars be delivered to southern and western connections in stated percentages in excess of receipts is admittedly an emergency measure and our findings herein will not be inconsistent therewith.

The substance of the position of the car service committee is that the relocation of cars may be properly left to its activities. The propriety of this course is made doubtful by the fact that the car service committee has not been adequately empowered to deal with the situation, and has not secured the effective cooperation of the carriers as a whole. Although we were assured that a committee would be constituted with full powers, this was not done. The powers of the car service committee to secure the relocation of cars by the respondents are recommendatory in character, as shown by the statement of its powers above set forth, and as testified by a member of that committee at the hearing on December 28. That it has not been able to secure the cooperation of a substantial number of the respondents is conclusively shown by its circular No. 5, issued under date of December 18, 1916, set forth as Exhibit D of the appendix. In this connection it is proper to state that the members of the car service committee, although acting with wholly insufficient power and without the support of some of the largest railroad systems, have made an earnest and intelligent effort to bring relief to existing car service conditions.

Immediately following the hearing on December 28 the president of the American Railway Association notified the Commission through one of its members that the chairman of the car service committee had resigned, and that this committee would be transferred from Washington to the city of New York. Subsequently an illuminating statement of the situation, fully set out in the appendix, marked Exhibit E, was transmitted to the Commission.

While the question of the Commission's jurisdiction to enter an order requiring the carriers to observe reasonable rules for the

exchange, interchange, and return of cars used in interstate transportation has not been questioned upon this record, we are not unmindful of the general discussion of that question and others relating to car shortage found in our last annual report. What was there discussed covered several phases of car supply and distribution. It was made the basis of the following recommendation:

That the Commission be given definite and specific authority to prescribe for all carriers by rail subject to the act rules and regulations governing interchange of cars, return of cars to the owning road, the conditions and circumstances under which such cars may be loaded on foreign roads, and the compensation which carriers shall pay to each other for the use of each other's cars. The carriers should be required to publish, post, and file with the Commission, under the provisions of section 6 of the act, such rules and regulations prescribed by the Commission, and should be held to an observance of those rules and regulations just as they are held to an observance of their lawfully published, posted, and filed rates.

We have thus indicated in broad outline amendments of the act which in our judgment are urgently required by existing conditions. But for the purposes of the issue immediately before us we think the powers conferred by the act are sufficient to enable us to require the observance of rules for car service found on this record to be reasonable and which in large measure are the same as those adopted by the respondents themselves.

In *Missouri & Illinois Coal Co. v. I. C. R. R. Co.*, *supra*, it appeared that the Illinois Central Railroad Company had established a rule prohibiting the sending of its coal cars loaded with coal to the lines of certain designated carriers in order to retain on its own line sufficient cars to serve the communities dependent on it for fuel. This rule was attacked as unlawful. It was held that the temporary confiscation by carriers of the cars of other railroads and the placing of embargoes against cars being sent off the lines of the owners are alike unlawful and that the railroads would be expected to make such rules for the return of cars as would terminate such abuses; that carriers are required to make reasonable rules and regulations with respect to the exchange, interchange, and return of cars used upon through routes and for the operation of such through routes, and that where they have failed in this respect the Commission is empowered to determine the individual or joint regulation or practice that is just, fair, and reasonable. With reference to its power under the act, the Commission said:

* * * the law does not assume that the Commission will take the initiative in these matters, and the carriers are called upon to establish the through routes and to maintain them. They have it within their own power to enforce rules as between each other by which this command of the law may be observed. If, however, as in this case, it is seen that the methods pursued by the carriers relating to the return of equipment are not such as to protect shippers against discrimination and injustice, this Commis-

sion may undertake to prescribe the conditions under which these through routes shall be maintained, for it is provided (section 15):

"That whenever the Commission shall be of the opinion that any individual or joint regulation or practice whatsoever of such carrier or carriers subject to the provisions of this act are unjust or unreasonable, or unjustly discriminatory, or unduly preferential or prejudicial or otherwise in violation of any of the provisions of this act, the Commission is hereby authorized and empowered to determine and prescribe what individual or joint regulation or practice is just, fair, and reasonable to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds the same to exist, and shall conform to and observe the regulations and practice so prescribed."

The law's requirements as to the duty of the carrier to the shipper to furnish equipment and maintain its through route carries with it necessarily the power on the part of this Commission to enforce rules which will permit the free interchange of traffic as between carriers. The carriers must keep their through routes open, and if they fail to do this because of the diversion or appropriation of cars, this Commission has it within its power to prescribe the conditions upon which such through routes shall be operated.

The carriers must make reasonable rules and regulations with respect to the exchange, interchange, and return of cars used upon their through routes and for the operation of such through routes (section 1), and where they have failed in this respect and "are in violation of any of the provisions of this act" the Commission is empowered to determine the individual or joint regulation or practice that is just, fair, and reasonable (section 15).

The power of the Commission to require a carrier to permit its cars to move from its line to the rails of a foreign line is thus clearly defined, and it is a necessary corollary that the observance of a reasonable rule for the return of such cars to the owning line may also be required. Section 1 requires the carriers subject to the act—

* * * to establish through routes, * * * to provide reasonable facilities for operating such through routes and to make reasonable rules and regulations with respect to the exchange, interchange, and return of cars used therein, and for the operation of such through routes * * *.

And it is hereby made the duty of all common carriers subject to the provisions of this act to establish, observe, and enforce * * * just and reasonable regulations and practices affecting * * * the facilities for transportation * * * and all other matters relating to or connected with the * * * transporting * * * of property subject to the provisions of this act which may be necessary or proper to secure the safe and prompt * * * transportation of property * * *.

Section 13 of the act provides:

* * * the Interstate Commerce Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case * * *. And the said Commission shall have the same powers and authority to proceed with any inquiry instituted on its own motion as though it had been appealed to by complaint or petition under any of the provisions of this act, including the power to make and enforce any order or orders in the case, or relating to the matter or thing concerning which the inquiry is had excepting orders for the payment of money.

We have been asked by representatives of shipping interests to invoke the provisions of sections 12 and 20 of the act. From these sections we quote the following:

* * * The Commission is hereby authorized and required to execute and enforce the provisions of this act; and, upon the request of the Commission, it shall be the duty of any district attorney of the United States to whom the Commission may apply to institute in the proper court and to prosecute under the direction of the Attorney General of the United States all necessary proceedings for the enforcement of the provisions of this act and for the punishment of all violations thereof * * *. (Sec. 12.)

That the circuit and district courts of the United States shall have jurisdiction, upon the application of the Attorney General of the United States at the request of the Commission, alleging a failure to comply with or a violation of any of the provisions of said act to regulate commerce or of any act supplementary thereto or amendatory thereof by any common carrier, to issue a writ or writs of mandamus commanding such common carrier to comply with the provisions of said acts, or any of them. (Sec. 20.)

It is thus asserted that in so far as the present car service rules of the carriers are reasonable, but are not observed, we are authorized to require their observance by writ of mandamus under sections 12 and 20 of the act. It is also suggested that an order may be made by the Commission under the provisions of section 13, *supra*, and it is argued that if neither of these remedies were available the carriers might easily nullify the requirements of section 1 with respect to reasonable rules governing the exchange, interchange, and return of cars. The contention is that, although it has been held that if a car service regulation or practice of the carriers is found to be unreasonable and in violation of the act, we can require the carriers, in a proceeding under section 15, to cease and desist from the violation and to establish and enforce a reasonable practice and regulation, *Missouri & Illinois Coal Co. v. I. C. R. R. Co.*, *supra*; yet if, on the other hand, the regulation or practice were reasonable, but not observed, there would be no remedy under the act. In this connection it is pointed out that there is no substantial difference in effect between an unreasonable rule which is enforced and a reasonable rule which is not enforced.

We do not resort to the provisions of sections 12 and 20, *supra*, however, because certain changes in the present car service rules appear to be necessary, and for the reason that we do not deem it necessary at this time to take recourse to such drastic procedure, in view of our conclusion that the act empowers us to make an order requiring the observance of car service rules which we may find to be reasonable. In this connection it may be stated that a few days before the institution of this investigation bills in equity were filed in the district court of the United States for the northern district of Illinois by certain coal companies, operating mines on the lines of the Chicago & Eastern Illinois and the Chicago, Terre Haute & Southeastern,

asking for an order requiring the defendant carriers to return coal cars to the lines named in compliance with car service rules. The Commission's investigation was in progress when a decision was rendered denying the relief prayed for upon the ground that Congress having given the Commission power of supervision and enforcement under section 1 of the act, that court was without power, in advance of action by the Interstate Commerce Commission, to relieve the situation.

It is clear that the entry of a formal order is necessary to protect shippers, consignees, and the general public, but not less is it necessary to protect those carriers which have sent foreign cars home in obedience to the direction at the hearing but which have not received their own cars from other lines. It would indeed be an anomaly if certain carriers could with impunity violate section 1 by failure to observe reasonable rules for the "exchange, interchange, and return of cars," and by so doing prevent other carriers from furnishing the transportation upon reasonable request which is required by the same section. While all the members of the Commission are not in accord with respect to the powers of the Commission to make an order in this case, the wrongs are flagrant, and even if there were doubt as to the Commission's power to give full relief by formal order we think that in the emergency that doubt should be resolved in favor not only of the carriers who are wrongfully deprived of the use of their cars, but in favor of shippers and of the general public, who would be without adequate remedy if, having the power, we fail to act.

For purposes of bringing immediate relief to existing conditions, the present code of car service rules, with certain modifications, will have our approval for application until May 1, 1917, in so far as they relate to open-top coal and coke cars, and to railroad owned or controlled refrigerator, heater, ventilated, and insulated cars. The modifications found necessary consist in the elimination of certain movements of foreign cars other than to the owning road, or in its direction, which the present code permits.

Upon all the facts of record we find—

A. That the present car service rules of respondents, stated in Exhibit A, appendix, are unreasonable to the extent that they differ from the following, which we find to be reasonable car service rules.

1. All foreign open-top coal and coke cars and all foreign railroad owned or controlled refrigerator, heater, ventilated, and insulated cars received under load may be forwarded to destination; when original lading is removed, or when received empty, they must be returned to their owners, either loaded or empty—

(a) Direct, if belonging to direct connections;

- (b) Through the proper home route if belonging to other than direct connections.

(NOTE.—The home road shall have the right to demand the return of its empty cars at the junction point where delivered loaded.

This right does not apply to cars offered home for repairs under the provisions of M. C. B. Rule 2.)

2. The proper home route for cars belonging to other than direct connections includes the following deliveries only:

- (a) Loaded, consigned (via any route) to a destination on the home road;
- (b) Loaded, consigned (via any route) to a destination on a direct connection of the home road; or
- (c) Loaded, consigned to a destination on the road from which originally received, if such movement is in the direction of home; or
- (d) Empty, to the road and at the junction point from which originally received.

3. (a) Loaded cars may be delivered to switching roads to be unloaded within the switching district. Such deliveries shall be indicated on the junction report by the words "for unloading."

A car received loaded in switching service, when the original lading is removed, must be returned to the home road, loaded or empty, if a direct connection within that switching territory; otherwise, unless it home routes from the switching line to some other road, it must be returned to the delivering road loaded or empty, in accordance with rules 1 and 2.

(b) An empty foreign car may be delivered to a connecting road to be loaded within the designated switching limits and returned. Such deliveries shall be indicated on the junction report by the words "for loading."

The road delivering the car to the switching road must in all cases specify loading, route, and destination, which must be in accordance with rules 1 and 2.

The switching road must comply with the instructions of the delivering road.

4. These rules do not apply to cars reconsigned with original lading under duly filed and published tariffs until the original lading has been removed therefrom.

5. Any delivery of a foreign open-top coal or coke car or foreign railroad owned or controlled refrigerator, heater, ventilated, or insulated car, except as provided in these rules, is a diversion.

We further find:

B. That the practices of respondents in failing to observe the present car service rules, stated in Exhibit A, appendix, with regard to the return of foreign open-top coal and coke cars and foreign railroad

owned or controlled refrigerator, heater, ventilated, and insulated cars, to the extent that those rules are not modified by the rules found reasonable, *supra*, are in violation of section 1 of the act.

It is our view that the application to the car service rules herein found reasonable of a diversion penalty similar to that provided for in rule No. 3 of the code of per diem rules, stated in Exhibit A, appendix, would be proper.

An order will be entered accordingly requiring the establishment and observance of the car service rules herein found reasonable until May 1, 1917, and will take effect under the provisions of the act not less than 30 days from the date of the service thereof. This order will be subject to modification, and the effective date subject to extension, during that period, upon showing of reasonable necessity therefor.

The Commission is of the opinion that prompt relief for existing car supply conditions can be secured through executive action; that it is the duty of all the carriers at once to appoint a committee, as contemplated at the hearing, vested with plenary power to secure a relocation of cars, and to cooperate with this Commission at Washington, in order that we may be fully advised as to the situation from day to day. If this is done and it is found that any modification of our order is necessary, before or after the effective date thereof, the facts thus brought to our attention will be considered with that end in view. Unless this is done within 10 days from the service of this order, the entry of an order prescribing car service rules for other classes of equipment will be considered.

CLARK, *Commissioner*, dissenting:

I am fully sensible of the gravity of the existing conditions of transportation by railroad, and I appreciate the importance of adopting all reasonable measures for relief from the serious difficulties. I am, however, unable to agree with the majority report, either as to interpretation of the law and of our powers, or as to the conclusions reached.

The interpretation placed by the majority upon the act and the powers which it confers upon us is at variance with all of the interpretations heretofore adopted by the Commission and with the views which it has expressed on this subject.

In *Missouri & Illinois Coal Co. v. I. C. R. R. Co.*, cited in the majority report, we said:

No testimony has been taken in this case as to the rules that should be enforced and our power would not be exercised in any event without the fullest hearing as to the effect any order that the Commission might make would have upon the practices of the railroads of the country.

In the instant case the testimony of record as to the rules which the majority find to be unreasonable is to the effect that they have been very recently adopted and that no one can tell what their effect will be.

In *In the Matter of Car Shortage and Other Insufficient Transportation Facilities*, 12 I. C. C., 561, decided in January, 1907, separate reports were presented by the two Commissioners who heard all the testimony. In one of them it is said:

If the Interstate Commerce Commission is to be vested with power to make rules under which railroads shall be required upon penalty to furnish cars to shippers, this Commission should also be empowered to make rules under which free interchange of cars shall be effected, or require railroads engaging in interstate commerce to make such rules for their own protection and provide for their enforcement.

In the other it is said:

Some railroad men of prominence appearing before us seemed to think that the more effective regulation of the interchange of cars by carriers would of itself go far toward remedying the present car shortage. There seem to be strong reasons for thinking that the proposed car pool or car clearing house would result in a more effective car service. If some such adjustment can not be reached by the companies themselves it may be that legislation will become desirable and necessary.

These reports were unanimously agreed to by the Commission, and the significance of the expressions quoted, to the effect that the Commission did not have power to prescribe general rules relative to interchange of cars, and the possibility or probability that such legislation might become necessary, can not escape notice.

In its annual report of December 1, 1916, submitted to the Congress a few weeks since, the car shortage situation was discussed quite fully, and recommendation was made that the Commission be given authority in law to prescribe, for all carriers by rail subject to the act, rules and regulations governing the interchange and return of cars and the conditions and circumstances under which they may be used on foreign roads, and the compensation which one carrier should pay to others for the use of foreign cars.

I am not satisfied that this record discloses a proper basis for the finding that the existing car service rules are unreasonable, because, as noted, they have been in effect only since January 1, 1917, and the substance of the testimony relating to them was that no one could tell how satisfactory or efficacious they would be. I am not satisfied that the record contains a proper basis for the finding that the rules prescribed in the order herein are reasonable.

The underlying idea is that open-top coal and coke cars and railroad owned refrigerator, insulated, and ventilated cars shall be returned to their owners, while as to all other cars the American Railway Association rules are left to apply and ownership is disregarded. Were it not for the long established custom, voluntarily agreed to among the

railroads, under which all carriers members of the American Railway Association accepted the car service rules of that association and put their cars into service thereunder, there would be strength in the argument that the owner of the car is entitled to first claim on it. If as a matter of law carriers are required to promptly return to their owners coal and coke and refrigerator cars, I am unable to see why that same law would not extend to other kinds of cars.

The Commission is essentially an administrative body, exercising powers specifically delegated to it by the Congress. It also exercises quasi judicial powers, likewise delegated. But if the law is to be interpreted differently from time to time to fit conditions that obtain on the railroads, and the Commission exercises in a time of stress a power which it has not only never before felt that it had, but which it has several times said it did not have, it adds to its delegated administrative and quasi judicial powers legislative powers. for the exercise of which I can find no justification.

The times are abnormal, and they call for exercise of special effort on part of the railroads, the shippers and the receivers of freight, to the end that the highest possible efficiency may be secured from the available facilities. I agree with the view that the carriers ought to take hold of the situation vigorously and place plenary power in the hands of a committee to change their car service rules from time to time and in various sections of the country as may be appropriate to meet the unusual conditions.

While I have felt impelled to dissent from the majority view, I shall not undertake further to elaborate my objections.

I am authorized to say that COMMISSIONERS CLEMENTS and HALL concur in this dissent.

APPENDIX.

EXHIBIT A.

CIRCULAR No. 1751.

THE AMERICAN RAILWAY ASSOCIATION.

CODES OF CAR SERVICE AND PER DIEM RULES.

Office of the General Secretary, 75 Church Street.

W. W. ATTERBURY, President.

A. W. THOMPSON, First Vice President.

A. H. SMITH, Second Vice President.

J. E. FAIRBANKS, General Secretary and Treasurer.

H. J. FORSTER, Assistant Treasurer.

NEW YORK, November 24, 1916.

TO THE MEMBERS OF THE AMERICAN RAILWAY ASSOCIATION:

At the session of the Association held on November 15, 1916, the following resolutions were adopted:

Resolved, That a letter ballot be taken in the usual manner upon the question of amending Car Service Rules 1, 2, 3 and 4 and Per Diem Rules 1, 3, 11 and 19, as recommended by the Commission on Car Service, to take effect as of December 1, 1916, if approved by a majority of the membership, that membership to represent two-thirds of the cars owned or controlled by the association.

Resolved, That the Commission on Car Service be, and is hereby, empowered, with the approval of the Executive Committee, to add to or modify any of the Car Service or Per Diem Rules included and referred to in its report.

The total membership is 405, and the cars owned and controlled by members, 2,469,280. The majority requisite for approval is 203 members, owning and controlling 1,646,186 cars.

The vote on the foregoing resolutions was as follows:

Yes—298 memberships, representing 2,186,922 cars owned and controlled.

No—51 memberships, representing 164,741 cars owned and controlled.

Not voting—56 memberships, representing 117,617 cars owned and controlled.

Please take notice, therefore, that the proposition to amend Car Service Rules 1, 2, 3 and 4 and Per Diem Rules 1, 3, 11 and 19, to take effect as of December 1, 1916, and that the Commission on Car Service be empowered, with the approval of the Executive Committee, to add to or modify any of the Car Service or Per Diem Rules included in its report is, therefore, approved.

The amendments to the Codes of Car Service and Per Diem Rules are indicated in the attached Exhibit A.

Respectfully,

J. E. FAIRBANKS,
General Secretary.

EXHIBIT A.

CODE OF CAR SERVICE RULES.

PRESENT FORM.

1. Foreign cars must be promptly returned to their owners, and must be handled as prescribed by Rules 2, 3 and 4.

2. (a) Foreign cars must be utilized for loading to other lines in preference to home equipment, in accordance with Paragraph (b), (c) and (d) of this rule.

(b) Loaded (via any route) so that the home road will participate in the freight rate, or

(c) Loaded to the road from which originally received, if such loading is in the direction of the home road, but not otherwise, or

(d) Loaded to an intermediate road in the direction of the home road, or

NOTE.—A road or a combination of roads competing with the road owning the car from point of delivery to destination shall not be considered as an intermediate road or roads.

(e) Cars may be loaded in local service in the direction of any junction point with the home road, subject to 3 (c), or

(f) Cars may be loaded locally in an opposite direction from the home road or home route if to be loaded according to Rule 2 (b), (c) or (d).

3. (a) If cars cannot be returned under load, as per Rule 2, they must be returned empty in accordance with this rule.

(b) Empty cars belonging to a system having a direct connection should, subject to 3 (c), be delivered to such connection regardless of whence they came, or may be returned to delivering line.

(c) The car owners shall have the right to demand the return of his empty cars at the junction point where delivered loaded.

NOTE.—This right does not apply to cars offered home for repairs under the provisions of M. C. B. Rule 2.

(d) Empty cars may be sent in an opposite direction from the home road or home route, if to be loaded according to Rule 2 (b), (c) or (d).

(e) Empty cars may be delivered to connecting road, switching or otherwise,

AMENDED FORM.

1. Foreign cars received under load may be forwarded to destination; when the original lading is removed, or when received empty, they must be handled as provided in Rules 2, 3 and 4.

Any delivery of a foreign car except as provided in these rules is a diversion.

2. Foreign cars belonging to direct connections must be returned to the home road.

NOTE.—The home road shall have the right to demand the return of its empty cars at the junction point where delivered loaded.

This right does not apply to cars offered home for repairs under the provisions of M. C. B. Rule 2.

3. Foreign cars belonging to other than direct connections must be delivered:

(a) Loaded (via any route), so that the home road will participate in the freight rate, or

(b) Loaded (via any route), to a direct connection of the home road, or

(c) Loaded to the road from which originally received.

(d) Empty to the road and at the junction point from which originally received.

to be loaded in accordance with Rule 2 (b), (c) or (d), but not otherwise.

(f) When necessary to return cars empty belonging to roads other than direct connections, they may be delivered to the road from which received.

(g) By agreements between the railroads over which they are to move, empty cars may be short-routed, subject to Rules 1, 3 and 4, at a reciprocal rate of $3\frac{1}{2}$ cents per mile, plus bridge and terminal arbitraries, with a minimum of 100 miles for each road handling the car. The road requesting the movement must pay the charges.

(h) Cars received in road or switching service unloaded at a point where there is a direct connection with the owner must be returned to the owner at that point, subject to 3 (c).

4. Cars received loaded in switching service must be confined to switching territory and when made empty must be returned to the owner if a direct connection within that territory or otherwise to the road from which received, or may be loaded within switching territory in accordance with Rule 2 (b).

4. (a) *Loaded cars may be delivered to switching roads to be unloaded within the switching district. Such deliveries shall be indicated on the junction report by the words "For Unloading."*

A car received loaded in switching service, when the original lading is removed, must be returned to the home road, loaded or empty, if a direct connection within that switching territory; otherwise unless it home routes from the switching line to some other road it must be returned to the delivering road loaded or empty; if loaded it must be in accordance with Rule 3.

(b) *An empty foreign car may be delivered to a connecting road to be loaded within the designated switching limits and returned. Such deliveries shall be indicated on the junction report by the words "For Loading."*

The road delivering the car to the switching road must in all cases specify loading, route and destination, which must be in accordance with Rules 2 and 3.

The switching road must comply with the instructions of the delivering road.

NOTE.—Car Service Rules 1 to 4, inclusive, do not apply to cars reconsigned with original lading under duly filed and published tariffs.

NOTE.—Car Service Rules 1 to 4, inclusive, do not apply to cars reconsigned with original lading under duly filed and published tariffs.

CODE OF PER DIEM RULES.

PRESENT FORM.

1. The rate for the use of freight cars shall be 45 cents per car per day, which shall be paid for every calendar day, and shall be known as the per diem rate; except that where Per Diem is not reported to car owner within six months

AMENDED FORM.

1. The rate for the use of freight cars shall be 45 cents per car per day, but may be increased for a specified period to an amount not in excess of \$1.25 per car per day, which shall be paid for every calendar day, and shall be known as the per diem

from the last day of the month in which it is earned, the rate shall be increased five cents per car per day.

3. Freight cars must be handled as prescribed by Rules 1, 2, 3 and 4 of the Code of Car Service Rules of The American Railway Association.

11. Within thirty days after the end of each calendar month, car owners shall be furnished with a Per Diem Report for that month, on the prescribed form, G, showing the number of days each car has been in service upon the road making the report.

Claim covering corrections or omissions in Per Diem Reports must be presented after four months and within one year from the last day of the month in which the Per Diem was earned. This will not prevent the continuance of any case after the period named, if it has been previously opened, even though the claim should eventually rest upon some road other than the one originally addressed, except that the privilege of continuance shall cease when claimant fails to return claim or present it to another road within a period of six months from date such claim is last returned to claimant.

Where Per Diem has been reported to other than car owner, which fact is developed in the investigation of a claim for short Per Diem, the reporting road shall be responsible to car owner for Per Diem earned, and shall have the privilege of continuing such claim for refund of Per Diem from the road to which it was thus incorrectly reported. When Per Diem has been reported to car owner under incorrect initial or number, which fact is developed in the investigation of a claim for short Per Diem, the reporting road shall have the right to transfer the allow-

rate; except that where Per Diem is not reported to car owner within six months from the last day of the month in which it is earned, the rate shall be increased five cents per car per day.

3. Freight cars must be handled as prescribed in Rules 1, 2, 3 and 4 of the Code of Car Service Rules of The American Railway Association.

A road diverting a foreign car shall pay to the owner thereof the sum of five dollars in addition to the Per Diem and shall report same as a separate item on the Per Diem Report for the month in which the car was diverted.

11. Within thirty days after the end of each calendar month car owner shall be furnished with a Per Diem Report for that month, on the prescribed form, G, showing separately for open and closed cars the number of days each car has been in service upon the road making the report.

NOTE.—Open cars, Classes G, H, and F, and closed cars, Classes X, R, V, S and T as specified in the Definitions of the Master Car Builders' Association and as reported in the Official Railway Equipment Register.

No change.

4

No change.

ance from the incorrect to the correct initial or number as an offset to the claim.

19. (1) The Executive Committee of The American Railway Association shall appoint a Commission for the purpose of enforcing the observance of Car Service Rules 1, 2, 3 and 4, governing the handling of freight cars.

2. The Commission, through its duly authorized representatives, shall be empowered to examine all records of members of the Per Diem Rules Agreement, and it shall have authority to institute proceedings against member lines for violations of said rules, either on its own initiative or on complaints filed with it.

3. It shall be the duty of the Commission to conduct such investigation as may in its judgment be necessary to determine the facts, and it shall then be within the power of the Commission to impose a penalty, the minimum of which shall be \$2.00 for each violation, such penalty to be paid to The American Railway Association in addition to the expense incurred incident to the investigation.

4. Any railroad, after notice to offending line of its intention to do so, may refer to the Commission any case or cases of violation of these rules.

5. In the event the case presented is not proven, the expense of the investigation shall be paid by the complainant.

6. The Commission shall not consider a case unless presented within 90 days from date of first alleged violation, nor shall the investigation extend back of a period of 90 days from date of filing of complaint with the Commission, nor prior to the adoption of these rules.

19. (1) The Executive Committee of The American Railway Association shall appoint a Commission *authorized*—

(a) *To increase the per diem rate for a specified period in times of car shortage; but the Commission shall in no case set the rate at a figure above the maximum rate named in Per Diem Rule 1, nor give less than thirty days' notice of any change in the rates.*

Subject to the above limitation the per diem rates may differ (1) as between open and closed cars, and (2) as between Official, Southern and Western Classification territory.

(b) *To enforce the observance of Car Service Rules 1, 2, 3 and 4, governing the handling of freight cars.*

(c) *To suspend the diversion penalty specified in Per Diem Rule 3 in times of car surplus, or when in its opinion such action is desirable.*

2. No change.

3. It shall be the duty of the Commission to conduct such investigation as may in its judgment be necessary to determine the facts.

If the Commission shall find that a diversion has been made without being reported, as required under Per Diem Rule 3, it shall impose a penalty of \$10 for each such diversion. One-half to go to the owner of the car diverted; one-half to The American Railway Association.

4. No change.

5. No change.

6. No change.

EXHIBIT B.

Car location statements.

PERCENTAGE OF ALL FREIGHT CARS ON LINE TO TOTAL OWNED.

	Cars owned.	Oct. 1, 1916.	Nov. 1, 1916.	Nov. 15, 1916.	Nov. 23, 1916.	Dec. 1, 1916.	Dec. 8, 1916.	Dec. 15, 1916.	Dec. 23, 1916.	Jan. 1, 1917.
GROUP 1.										
Bangor & Aroostook.....	5,372	63.71	68.37	58.75	57.99	59.64	59.53	64.38	63.66	62.64
Boston & Albany.....	7,765	113.73	128.64	128.91	128.72	122.52	126.53	122.05	121.06	114.06
Boston & Maine.....	24,025	153.98	165.39	161.49	153.71	147.26	143.59	140.05	141.96	141.87
Central Vermont.....	2,924	105.61	99.42	101.02	101.87	102.31	103.00	97.84	90.49	90.90
Maine Central (Inc. Portland Terminal Company).....	8,710	.....	.....	128.50	131.93	118.17	114.08	110.70	113.09	112.14
N. Y., N. H. & H.....	84,375	126.18	130.23	130.28	122.31	119.22	114.82	108.12	107.47	117.78
Rutland.....	2,568	76.58	79.64	72.41	75.83	71.52	79.40	77.88	73.28	72.16
Total.....	.....	.....	.....	131.60	126.16	121.61	119.09	114.66	115.17	117.88
GROUP 2.										
Baltimore & Ohio.....	86,831	96.03	90.70	90.22	90.15	92.13	96.30	97.67	97.88	99.50
B. & O. & P.....	17,142	79.71	74.58	70.83	70.69	69.56	70.48	70.44	68.52	69.29
Buffalo & Sus.....	3,231	33.60	55.98	52.67	50.52	56.63	40.64	46.24	43.67	32.84
Central of N. J.....	26,859	100.75	100.62	96.96	93.79	95.02	86.95	93.40	91.59	88.57
Central New Eng.....	1,091	311.18	410.27	416.68	353.30	231.20	202.07	205.59	233.01	229.51
Cumberland & Pa.....	1,772	.....	.....	34.60	23.55	32.60	17.54	21.38	17.99	27.19
Delaware & Hudson.....	18,308	106.16	117.41	121.24	116.99	116.15	103.28	101.93	96.41	95.19
Del., Lack. & West.....	27,812	98.50	96.44	.....	112.93	107.00	106.38	102.39	98.09	99.04
Erie.....	64,428	119.70	116.87	114.33	119.00	119.00	118.02	118.54	116.01	114.68
Lehigh Valley.....	49,789	100.79	101.66	105.52	(¹)	107.90	109.35	111.26	112.60	111.30
Long Island.....	1,239	397.13	472.20	485.38	479.25	438.26	458.34	421.66	375.32	363.60
Montour.....	3,097	24.05	22.78	28.09	28.73	29.83	23.09	26.60	19.34	22.46
N. Y. C.....	129,262	118.64	108.63	104.03	111.18	113.28	106.48	113.01	113.98	108.88
N. Y., O. & W.....	5,664	106.23	103.43	97.17	91.09	108.28	106.48	110.13	110.71	104.09
N. Y., Phila. & Nor.....	2,119	204.09	154.46	154.46	166.80	178.43	169.70	163.80	174.90	221.99
Penns. R. R. (Inc. Penna. Company).....	265,516	98.11	101.07	98.60	(¹)	100.18	100.48	98.43	97.47	98.38
Phila. & Reading.....	39,673	121.53	127.90	125.04	138.61	130.27	124.49	135.71	140.24	138.64
Union R. R.....	5,542	149.39	130.28	137.93	153.50	147.52	137.67	162.34	146.48	149.71
Western Maryland.....	11,512	97.93	.....	110.65	(¹)	109.49	114.72	105.84	108.78	84.01
Total.....	.....	.....	.....	.....	.....	105.92	106.31	106.47	104.88	102.13

GROUP 3.

Ann Arbor.....	2,145	136.44	120.78	110.55	100.14	120.13	120.19	110.19	110.38	114.56
B. & L. E.....	14,579	68.32	54.22	82.02	48.00	52.55	50.13	47.20	51.28	44.67
C. I. & D.....	6,374	70.78	80.85	82.40	165.77	150.06	87.99	81.69	94.34	86.10
C. H. & D.....	6,780	174.74	175.05	165.21	165.99	160.06	152.32	159.70	164.66	159.06
Cin. Ind. & W.....	1,940	72.79	84.40	77.37	74.57	67.08	72.09	66.67	66.98	76.49
Cin. Northern.....	2,469	104.45	101.15	83.90	94.79	83.34	88.53	84.67	80.20	78.18
C. C. & St. L.....	2,968	180.07	174.15	105.17	115.66	107.47	100.63	99.77	90.49	102.16
D. T. & L.....	2,466	85.52	74.23	64.69	123.00	168.83	191.02	181.36	162.15	163.02
G. R. & I.....	14,685	164.47	146.45	68.69	135.25	178.94	78.53	67.44	72.45	74.98
Hooring Valley.....	4,532	125.98	127.74	137.47	130.47	116.21	126.22	115.52	116.97	111.08
L. E. & W.....	25,344	107.18	121.45	137.57	140.65	137.97	138.59	144.95	140.44	141.72
Mich. Central.....	10,573	134.73	144.63	144.50	137.76	137.87	140.24	144.25	133.40	132.06
N. Y. C. & St. L.....	15,428	137.84	144.63	144.50	137.76	137.87	140.24	144.25	133.40	132.06
Penna. Co. (Inc. Penna. R. R. group 2).....	3,784	84.53	85.97	72.78	74.93	81.79	78.03	75.05	78.63	90.37
Pere Marquette.....	9,063	177.65	185.71	115.07	107.45	104.99	115.99	105.12	79.44	80.62
Pitts. & L. E.....	2,500	135.85	122.16	121.54	137.76	124.30	113.71	106.57	105.85	122.14
Tol. & Ohio C.....	2,529	130.06	146.95	137.76	131.56	124.30	122.16	124.37	127.19	127.55
Tol. St. L. & W.....	17,467	136.40	146.95	137.76	131.56	124.30	122.16	124.37	127.19	127.55
Wardana.....	6,468	136.40	146.95	137.76	131.56	124.30	122.16	124.37	127.19	127.55
Wheeling & L. E.....	6,468	136.40	146.95	137.76	131.56	124.30	122.16	124.37	127.19	127.55
Total.....			146.37	135.87		110.28	110.13	107.76	109.36	111.06

GROUP 4.

Atl. C. L.....	27,909	71.32	70.66	74.96	74.77	77.46	80.99	88.30	91.63	91.32
C. & O.....	6,489	82.05	48.13	39.40	44.05	53.47	51.53	50.36	50.98	55.94
C. & W. C.....	1,066	189.05	161.48	166.64	167.87	180.46	157.96	169.13	126.28	115.15
C. & O.....	45,613	85.73	75.53	74.07	70.46	74.57	79.20	77.95	79.89	80.16
C. & O.....	1,924	70.88	66.91	68.52	62.65	56.34	67.00	69.55	67.10	70.83
Nor. Sou.....	3,072	95.05	112.93	112.31	114.63	122.44	124.34	115.98	118.68	113.68
N. & W.....	47,374	71.43	70.09	64.25	65.30	65.39	65.23	67.08	67.88	69.24
R. F. & P.....	222.18	235.74	235.74	244.53	229.12	210.63	202.90	196.57	211.61	258.05
Seaboard A. L.....	17,473	98.30	102.05	101.44	101.44	105.47	107.51	109.36	112.19	114.43
Southern.....	76,418			90.80	88.52	86.91	86.45	86.81	87.85	89.54
C. N. O. & T. P. ¹ Mobile & Ohio ¹ Ga. Sou. & Fla. ¹ Nor. Alabama ¹ Virginian.....										
Total.....	7,907	88.20	77.35	79.12	79.90	82.94	82.68	83.35	82.31	84.11
				80.29	79.24	81.45	81.81	82.96	84.17	85.45

¹ Not available.

¹ Not received.

¹ Included in Southern.

Car location statements—Continued.

PERCENTAGE OF ALL FREIGHT CARS ON LINE TO TOTAL OWNED—Continued.

	Cars owned.	Oct. 1, 1916.	Nov. 1, 1916.	Nov. 15, 1916.	Nov. 23, 1916.	Dec. 1, 1916.	Dec. 8, 1916.	Dec. 15, 1916.	Dec. 26, 1916.	Jan. 1, 1917.
GROUP 6.										
Atl. Birm. & Atl.	3,233	79.13	80.61	(¹)	(¹)	92.28	93.20	92.28	91.88	96.75
A. & W. P. W. of Ala.	1,999	78.06	83.53	80.21	83.60	73.45	73.63	73.37	71.63	90.33
Central of Georgia.	9,993	80.21	83.53	80.21	83.60	73.45	73.63	73.37	71.63	90.33
Florida E. Coast.	1,567	135.42	151.35	160.02	156.37	106.22	101.43	104.96	101.61	172.54
Georgia E. R.	1,766	80.44	77.33	76.81	77.05	93.43	92.41	108.32	121.12	97.73
Illinois Central.	62,794	80.04	63.93	62.52	62.50	73.09	74.76	73.68	74.17	72.06
Louisv. & Nashv.	45,096	50.03	50.03	61.28	65.53	64.10	63.57	62.23	63.28	67.82
N. O. & N. E.	3,378	56.73	65.00	65.22	73.49	74.33	81.72	84.23	84.59	94.13
N. C. & St. L.	10,614	56.73	65.00	65.22	73.49	74.33	81.72	84.23	84.59	94.13
Total.						73.56	73.00	73.13	73.60	73.94
GROUP 6.										
Chicago & Alton.	12,947	91.82	94.13	94.90	85.80	87.22	86.67	98.28	96.47	98.55
Chgo. & E. Illinois.	24,226	75.03	82.26	70.23	73.66	79.13	86.69	81.33	71.03	78.69
Chgo. & N. West.	67,612	94.80	106.59	105.21	104.61	101.23	101.43	99.85	101.69	99.26
Chicago Belt.	297	90.63	92.15	92.21	(¹)	971.38	1,355.89	1,683.97	2,080.81	1,518.52
Chgo. Burt. & Quincy	65,533	96.01	94.58	90.53	(¹)	92.46	89.94	88.50	90.47	90.80
Chgo. Grt. Western	10,425	110.62	98.73	128.49	118.86	116.41	116.10	109.79	88.15	90.37
C. M. & St. P.	59,510	79.45	77.78	79.27	66.90	64.63	72.43	71.61	74.19	68.31
C. P. & St. L.	1,821	96.05	92.77	87.90	(¹)	88.49	86.45	88.67	86.33	94.84
C. R. L. & P.	46,898	130.11	117.06	116.05	(¹)	112.65	101.61	101.61	96.92	102.06
C. St. P. M. & O.	12,115	96.01	94.58	90.53	(¹)	44.44	50.16	51.07	47.58	51.80
C. T. H. & S. E.	7,094	57.84	48.49	115.72	106.96	110.38	108.37	107.12	104.26	111.00
D. S. S. & A.	2,717	123.94	135.48	142.18	142.58	142.97	138.48	135.25	136.03	138.08
Edm. Joliet & E.	12,506	140.19	144.77	144.03	142.58	142.97	138.48	135.25	136.03	138.08
Grt. Northern.	66,814	126.73	121.96	112.52	114.52	111.72	111.18	104.09	103.26	101.53
M. & St. L.	7,112	92.26	89.61	82.36	80.95	88.62	81.99	80.00	79.57	74.25
M. St. P. & S. S. M.	22,765	92.26	89.61	82.36	80.95	88.62	81.99	80.00	79.57	74.25
Nor. Pacific.	47,353	44.67	41.29	46.02	97.36	97.31	92.96	96.73	95.83	93.24
T. P. & W.	1,918	44.67	41.29	46.02	(¹)	92.92	92.96	96.73	95.83	93.24
Total.						98.78	97.34	97.10	97.14	98.03
GROUP 7.										
St. Jos. & Gr. I.	516	155.70	154.54	146.62	120.70	119.34	144.57	122.67	115.70	104.84
Union Pacific (includes O. S. L. & O. W.)	36,451	86.81	92.38	96.16	94.81	96.67	91.62	86.77	86.70	87.45
Total.				96.82	96.15	95.98	92.32	89.71	86.06	87.66

GROUP 8.

C, R. I. & G. (included in C, R. I. & P., group 6).

Cals. & Southern.....	6,268	90.60	90.94	88.95	102.24	97.11	94.11	104.58	108.83	110.16
Denver & Rio Grande.....	19,322	90.03	88.50	91.54	91.45	97.67	94.03	98.25	102.87	104.34
K. C. City & Southern.....	1,847	106.91	108.41	108.34	96.45	103.57	101.00	107.02	108.74	111.10
K. C., M. & O.....	1,733	78.04	78.04	66.71	77.55	88.39	81.94	86.06	88.74	91.10
Midland Valley.....	2,135	83.05	83.05	77.00	77.00	85.38	84.60	81.57	84.53	87.85
M. K. & T.....	29,642	89.77	95.68	87.20	87.99	91.40	90.09	94.57	102.41	98.56
Missouri Pacific.....	41,197	103.37	102.50	98.51	97.64	95.50	99.53	102.83	100.90	98.98
St. L. & S. F.....	28,700	115.20	112.86	111.81	113.19	113.19	115.23	120.91	123.72	102.41
St. L. S. W.....	13,238	45.17	47.84	44.10	43.71	47.31	48.05	50.53	50.34	53.28
Term. of St. Louis.....	None.			(*)	(*)	(*)	(*)	(*)	(*)	(*)
Total.....						97.47	93.72	101.47	103.74	103.72

GROUP 9.

El Paso & S. West.....	3,882	128.66	107.26	114.14	111.77	118.86	-17.41	122.62	114.99	115.48
Fort W. & D. C.....	3,861	73.22	83.24	104.74	92.05	87.73	74.77	96.01	83.34	86.02
Gulf Coast Line.....	2,806					106.06	98.43	111.08	118.60	106.06
N. O., T. & M. ¹										
O., S. L. & W. ¹										
O. & W. N. ¹										
St. L., R. & M. ¹										
Int. & Gr. Northern.....	5,313	152.03	145.56	163.87	154.09	167.10	168.71	139.71	147.18	124.62
I. A. P. & Nav. Co.....	1,537	104.95	108.73	109.54	106.31	107.67	121.28	117.06	115.41	116.36
S. A. & P.....	1,625	97.33	95.29	111.72	98.64	91.10	105.86	115.83	120.20	108.36
Texas & Pacific.....	10,621			114.17	136.10	113.10	116.30	119.28	120.87	104.84
Trinity & Brazos Valley.....	1,625	55.00	56.28	60.40	62.78	58.80	58.65	62.58	58.20	54.66
Total.....						116.76	117.22	119.15	118.99	103.12

GROUP 10.

A., T. & S. F.....	57,640	99.67	96.87	98.58	97.43	94.31	90.95	95.29	96.15	95.44
A., T. & S. F. C. lines (included in A., T. & S. F.).										
Oregon Short Line (included in Union Pacific).										
O. W. R. R. & Nav. Co. (included in Union Pacific).										
Southern Pacific (inc. Sunset Central).										
L. A. & S. L.....	47,807			97.19	96.35	97.94	100.92	98.84	92.73	92.86
Spokane P. & S.....	3,083	98.13	99.11	93.78	93.35	102.26	94.66	105.86	102.46	108.29
Western Pacific.....	1,064	243.83		(*)	(*)	225.24	185.01	181.69	197.63	(*)
Western Pacific.....	2,164			(*)	(*)	138.91	140.02	134.29	133.09	130.22
Total.....						97.68	98.45	99.04	96.53	

* Not received.

* No cars owned.

* Included in G. C. L.

* Wired for correct report.

Car location statements—Continued.

PERCENTAGE OF ALL FREIGHT CARS ON LINE TO TOTAL OWNED—Continued.

	Cars owned.	Oct. 1, 1916.	Nov. 1, 1916.	Nov. 15, 1916.	Nov. 23, 1916.	Dec. 1, 1916.	Dec. 8, 1916.	Dec. 15, 1916.	Dec. 22, 1916.	Jan. 1, 1917.
GROUP 1L										
Canadian Govt. Rys. (Intercolonial).....	14,572	115.19	114.83	122.69	129.43	131.88	135.45	137.06	138.45	138.33
Canadian Northern.....	84,799	87.96	88.24	88.01	(1)	(1)	(1)	(1)	(1)	(1)
Canadian Pacific.....	42,694	125.53	122.93	117.42	113.37	35.88	113.29	128.21	127.37	126.71
Grand Trunk.....	15,510	35.92	37.82	(1)	(1)	(1)	33.36	33.31	32.78	31.57
Grand Trunk Pac.....										
Total.....						92.72	94.22	98.65	98.74	99.09

PERCENTAGE OF BOX CARS ON LINE TO TOTAL OWNED.

GROUP 1.										
Bangor & Aroost.	2,687	58.26	60.18	52.65	50.90	50.49	51.51	59.99	61.05	59.05
B. & A.	5,541	109.57	119.17	120.11	123.11	115.01	114.94	108.39	104.87	98.82
B. & M.	13,871	166.34	179.85	181.57	171.06	165.02	158.51	151.28	150.29	150.19
Cent. Vermont.	2,082	115.55	104.94	103.90	104.99	105.65	99.45	95.20	88.42	87.94
Malise Central (Inc. Portland Term. Co.)	5,080	118.42	130.13	143.09	146.48	126.78	121.53	121.08	123.35	122.50
N. Y. N. H. & H.	24,705	115.34	120.13	118.42	107.53	103.80	98.53	94.49	90.15	107.50
Railroad.	1,037	64.31	75.64	65.57	65.52	63.67	72.87	78.35	75.35	73.19
Total.....				131.24	124.40	117.53	114.24	110.47	111.79	114.36
GROUP 2.										
B. & O.	29,412	125.13	124.74	122.54	122.72	124.99	129.33	135.99	135.90	135.92
B. & P.	2,172	46.52	47.78	41.27	33.06	31.79	34.52	30.12	30.41	30.41
B. & S.	8,886	135.02	127.92	127.54	128.44	127.39	128.79	127.03	122.38	127.54
Cent. B. R. of N. J.	8,995	196.19	226.77	270.54	1,580.00	1,580.00	1,580.00	1,580.00	1,580.00	1,580.00
Cent. N. England.										
Comb. & Penna.										
D. & H.	4,982	167.79	149.10	(1)	1,580.00	1,580.00	1,580.00	1,580.00	1,580.00	1,580.00
D. L. & W.	15,317	99.40	102.03	(1)	117.42	117.27	108.83	97.04	92.88	91.88
Edm.	29,471	127.91	122.49	117.77	110.53	121.65	122.47	123.58	121.64	118.11
Fishers Valley.....	19,716	103.44	105.85	110.24	(1)	115.19	123.11	123.11	127.83	123.40
Long Island.....	13,134	601.28	710.12	680.97	631.15	644.75	693.49	673.30	665.38	665.64
Montreal.....				(1)	(1)	(1)	(1)	(1)	(1)	(1)
N. Y. C.	59,040	130.10	116.55	112.07	117.01	124.63	131.91	130.53	127.28	121.49
N. Y. O. & W.	59,915	146.46	211.85	215.96	210.71	215.86	202.19	214.54	198.48	172.79
N. Y. P. & N.	1,909			118.08	131.26	141.08	140.07	138.11	136.10	132.51

Car location statements—Continued.

PERCENTAGE OF BOX CARS ON LINE TO TOTAL OWNED—Continued.

	Cars owned.	Oct. 1, 1916.	Nov. 1, 1916.	Nov. 15, 1916.	Nov. 23, 1916.	Dec. 1, 1916.	Dec. 8, 1916.	Dec. 15, 1916.	Dec. 23, 1916.	Jan. 1, 1917.
GROUP 6.										
A. B. & A.	1,507			108.27		114.78	115.59	109.48	108.03	(1)
A. & W. P.-W. Ry. of Ala.	6,907			74.41		103.53	92.76	98.69	96.87	70.23
Cent. of Ga.	6,700	74.35	73.72	74.41	81.15	82.39	98.69	98.69	83.20	81.90
Florida E. Coast.	1,049		125.35	136.23	140.99	142.04	161.96	176.04	178.31	142.71
Georgia R. R.	1,169			103.42	111.21	104.79	103.60	112.76	140.29	112.23
Ill. Central.	28,694	81.03	72.84	76.70	77.44	89.43	103.60	63.84	64.28	65.14
L. & N.	18,132	64.45	67.17	60.68	65.47	66.00	63.17	64.72	65.81	72.89
N. O. & N. E.	3,653	43.20	50.81	53.56	52.89	58.43	64.76	64.76	64.28	53.01
N. C. & St. L.	7,244	39.33	42.89	43.33	50.04	45.59	53.74	51.43	46.23	48.61
Total						96.07	69.23	68.43	68.89	
GROUP 6.										
C. & A.	5,107	92.53	96.82	91.87	90.94	88.38	83.53	94.95	92.72	97.77
C. & E. I.	6,253	82.61	96.82	79.07	80.74	88.61	94.24	85.46	72.24	83.11
C. & N. W.	37,603	98.73	96.53	91.49	89.06	85.92	84.39	82.03	87.96	88.55
Chgo. Belt.	41			(1)	(1)	3,014.03	4,675.61	5,960.98	7,217.07	5,760.24
C. B. & Q.	20,396	86.50	89.31	82.41	(1)	79.96	77.45	82.15	77.47	79.86
C. G. W.	7,221		75.05	80.01	(1)	74.41	75.57	87.83	71.78	74.43
C. M. & St. P.	41,581			(1)	(1)	(1)	96.86	87.38	87.83	86.51
C. P. & St. L.	788			67.02	66.23	68.48	84.55	83.38	82.06	77.26
C. R. I. & P.	31,979	86.66	82.38	72.25	(1)	68.51	69.92	86.71	83.11	87.83
C. St. P., M. & O.	8,713	131.69	112.69	96.80	(1)	95.20	93.16	86.71	83.11	131.47
C. T. H. & S. E.	197	172.13	150.24	(1)	(1)	140.80	141.63	136.55	126.40	131.47
D. S. B. & A.	783		174.82	138.24	121.46	131.65	124.70	134.65	126.69	139.97
E. J. & E.	1,072	369.05	161.22	(1)	(1)	228.30	260.68	322.85	243.47	289.55
E. J. & E.	33,911			87.81	87.34	88.27	88.27	85.83	87.84	86.43
Grt. Northern.	18,206	91.35	79.70	84.09	85.07	84.86	88.86	85.60	78.78	79.63
M. & St. L.	5,431	79.75	74.65	73.19	73.50	69.32	70.84	65.26	63.07	62.68
M. St. P. & S. B. M.	26,254		94.42	96.58	97.75	95.65	96.92	96.82	93.73	91.60
No. Pacific.				(1)	(1)	50.96	19.77	24.23	23.34	21.76
T. P. & W.	1,457	34.33	38.85			50.96	19.77	24.23	23.34	21.76
Total						87.57	86.69	85.67	84.96	84.94
GROUP 7.										
St. J. & Grand Is.	340	110.29	85.47	94.11	81.18	85.41	87.94	84.41	80.41	83.82
U. P. (Inc. O. B. L.-O.-W.).	22,274	75.09	72.10	75.99	75.43	73.89	70.79	67.49	67.22	66.43
Total				75.31	73.53	73.47	71.04	67.44	67.10	65.48

Car location statements—Continued.

PERCENTAGE OF BOX CARS ON LINE TO TOTAL OWNED—Continued.

	Cars owned.	Oct. 1, 1916.	Nov. 1, 1916.	Nov. 15, 1916.	Nov. 23, 1916.	Dec. 1, 1916.	Dec. 8, 1916.	Dec. 15, 1916.	Dec. 23, 1916.	Jan. 1, 1917.
GROUP 11.										
Canadian Govt. Rys. (intercolonial).....	9,803			101.49	103.69	113.23	117.23	118.69	120.69	120.22
Canadian Northern.....				(¹)	(¹)	(¹)	(¹)	(¹)	(¹)	(¹)
Canadian Pacific.....	66,090	86.50	86.49	82.91	(¹)	82.16	82.34	84.28	84.77	86.83
Grand Trunk.....	29,258	111.53	103.94	106.39	101.36	96.70	100.83	120.07	117.83	116.94
Grand Trunk Pacific.....	11,978	34.17	33.87	(¹)	(¹)	33.86	26.86	26.96	28.79	27.02
Total.....						83.15	85.01			

¹ Not received.² Not received; wired for report.³ Not available.

PERCENTAGE OF GONDOLA, COAL, AND COKE CARS ON LINE TO TOTAL OWNED.

	Cars owned.	Nov. 1, 1916.	Nov. 15, 1916.	Nov. 23, 1916.	Dec. 1, 1916.	Dec. 8, 1916.	Dec. 15, 1916.	Dec. 23, 1916.	Jan. 1, 1917.
GROUP 1.									
Bangor & Aroostook.....	None.			None.	None.	None.	None.	None.	None.
B. & A.....	1,755	151.53	151.53	143.40	132.94	150.89	161.77	155.21	161.94
B. & M.....	7,668	134.94	121.63	121.63	119.56	120.37	126.49	133.93	133.84
Cent. Vermont.....	206	208.74	199.02	199.02	189.34	222.82	182.52	167.96	160.19
Maine Central (including Portland Term. Co.).....	1,451	123.24	117.07	117.07	119.81	116.66	105.48	113.94	113.68
N. Y., N. H. & H.....	7,849	140.87	148.81	148.81	156.96	161.51	134.83	122.94	125.53
Rutland.....	559	84.36	93.87	93.87	66.80	104.83	95.89	112.70	87.66
Total.....		137.32	134.83		135.80	136.69	132.47	126.92	134.91
GROUP 2.									
B. & O.....	59,790	70.09	69.94	69.94	73.23	76.69	77.59	77.43	78.37
B. & P.....	14,145	66.79	67.80	67.80	66.78	66.98	66.71	66.49	66.44
B. & S.....	2,746	55.21	(¹)	(¹)	59.15	58.21	45.27	45.41	32.19
Cent. H. R. of N. J.....	17,356	81.38	78.47	78.47	73.73	71.89	81.29	81.69	76.49
Cent. N. E.....	43	2,975.86	3,595.17	3,595.17	2,498.62	2,165.52	2,985.71	3,040.00	3,750.00
C. & P.....	1,798	28.07	17.78	17.78	27.45	13.13	15.06	14.81	15.31
D. & H.....	12,684	(¹)	(¹)	(¹)	(¹)	(¹)	(¹)	(¹)	(¹)
D., L. & W.....	11,748	64.00			101.08	100.68	101.28	101.04	96.87

Erie.....	22,566	117.03	113.35	120.16	119.02	118.35	115.40	115.13
Lehigh Valley.....	21,996	101.46	(1)	102.15	97.76	98.12	98.94	97.40
Long Island.....	715	364.23	361.42	363.61	261.23	262.61	260.97	260.68
N. Y. C.....	66,446	96.71	103.76	98.20	99.11	100.13	103.96	102.78
Montour.....	5,057	24.96	23.85	23.99	21.98	23.64	18.56	21.43
N. Y. O. & W.....	150	83.53	73.84	78.72	81.23	82.60	88.40	82.93
N. Y. P. & N.....	164,077	441.33	445.00	478.00	430.00	436.67	494.00	645.67
Penna. R. R. (Inc. Penna. Co.).....	29,372	81.10	(1)	82.28	92.61	82.35	81.16	81.36
P. & R.....	5,063	113.78	113.93	114.26	116.18	122.11	126.25	125.71
Union R. R.....	10,117	66.83	143.43	120.23	122.57	147.85	143.32	146.52
Western Md.....			(1)	67.06	60.04	73.50	76.04	58.78
Total.....				88.52	89.21	90.30	90.57	88.77
GROUP 2.								
Ann Arbor.....	674	144.59	126.93	142.52	132.15	142.52	140.21	142.96
B. & L. E.....	13,406	50.69	45.96	50.87	48.79	48.41	51.96	48.28
C. I. & L.....	2,702	93.15	104.63	104.70	110.68	97.56	113.02	104.89
Cin., Ham. & Dayton.....	2,519	186.11	187.97	167.65	181.18	192.66	179.00	178.80
Cin., Indpls. & West.....	114	400.83	385.96	399.12	360.53	266.67	285.09	410.53
Cin. Northern.....	78	947.44	836.74	653.85	852.56	836.76	936.90	772.08
C. C. & St. L.....	10,970	100.60	100.20	117.82	112.96	122.66	106.44	137.08
Detroit, Tol. & I.....	1,483	127.66	(1)	136.14	125.16	112.22	115.97	110.01
Grand Rapids & Ind.....	1,733	284.99	274.22	235.88	244.88	226.33	191.13	204.64
Hocking Valley.....	11,575	(1)	(1)	78.69	82.08	65.66	68.11	72.26
L. E. & Western.....	3	(1)	(1)	(1)	(1)	(1)	(1)	(1)
Michigan Central.....	4,626	260.85	260.06	266.88	251.78	246.09	260.46	267.96
N. Y. C. & St. L.....	3,829	110.89	106.40	108.01	113.14	99.84	94.28	96.84
Penna. Co. (Inc. Penna. R. R., group 2). Pere Marquette.....	3,355	212.44	189.51	186.11	198.61	213.80	199.97	194.58
Pitts. & L. Erie.....	25,848	70.61	72.80	78.55	74.93	70.22	74.22	81.95
Tol. & Ohio Cent.....	7,754	105.85	97.00	85.76	103.12	96.12	85.59	69.47
Tol., St. L. & West.....	5,517	237.91	204.33	254.83	239.07	213.64	213.43	203.48
Vandalia.....	5,094	96.49	82.49	101.79	117.57	108.72	109.83	108.44
Wabash.....	5,435	132.46	185.61	145.47	142.23	122.95	119.86	119.99
Wheeling & L. E.....	7,285	131.81	(1)	122.65	125.57	121.12	120.29	122.72
Total.....				107.93	109.65	103.14	103.18	105.08
GROUP 4.								
Atlantic C. L.....	635	237.32	226.46	219.21	228.66	224.09	263.31	225.35
C. C. & O.....	4,068	35.28	40.46	46.53	43.83	42.67	41.72	46.34
C. & W. C.....	99	453.54	406.67	472.73	420.20	523.23	311.11	263.94
C. & O.....	36,781	53.55	49.98	54.60	50.80	57.53	60.81	60.55
C. & C.....	1,477	33.18	25.80	22.28	28.08	25.46	24.58	27.96
Nor. Southern.....	1,152	410.71	577.38	673.81	940.13	367.89	410.53	417.11
Nor. & Western.....	36,164	50.96	52.28	52.55	53.86	53.21	54.55	55.91

Wired for report.

Not received.

* Own but 3 cars; 1,480 foreign cars on line Jan. 1, 1917.

* Not available.

* Not received.

Car location statements—Continued.

PERCENTAGE OF GONDOLA, COAL, AND COKE CARS ON LINE TO TOTAL OWNED—Continued.

	Cars owned.	Nov. 15, 1916.	Nov. 23, 1916.	Dec. 1, 1916.	Dec. 8, 1916.	Dec. 15, 1916.	Dec. 23, 1916.	Jan. 1, 1917.
GROUP 4—continued.								
R. F. & P.	405	92.83	104.44	66.51	64.44	71.11	75.80	85.43
Seaboard A. L.	4,014	109.89	112.43	115.15	114.24	111.93	102.04	103.71
Southern.	27,654	74.89	68.55	73.43	74.51	76.51	76.06	77.28
C. N. O. & T. P. ¹								
Mobile & Ohio. ¹								
Ga. Sou. & Fla. ¹								
No. Alabama. ¹								
Virginian	6,326	86.23	86.28	90.00	89.03	90.10	89.74	91.89
Total	.....	62.17	60.25	63.43	65.44	65.00	66.72	66.83
GROUP 5.								
Atl. Birm. & Atl.	982	(2)	(2)	96.11	100.21	110.95	110.32	111.64
A. & W. P.-W. Ry. of Ala.	401	34.91	30.67	30.67	53.53	56.73	47.26	51.49
Central of Georgia	2,443	94.96	83.86	83.86	92.60	96.86	90.76	93.04
Florida E. Coast	159	425.00	401.26	410.00	394.97	403.77	427.67	415.72
Georgia R. R.	338	79.29	78.99	78.99	74.26	130.77	93.20	79.59
Illinois Central	25,051	70.45	75.68	75.68	79.45	77.95	79.48	80.97
Louisv. & Nashville	20,663	60.49	63.05	65.49	61.44	60.18	60.97	63.72
N. O. & N. E.	1,018	85.77	108.24	133.47	141.12	150.93	144.85	93.97
N. C. & St. L.	2,289	93.31	101.47	94.47	84.66	89.13	93.58	91.20
Total	.....	.....	.....	75.23	75.05	75.50	76.09	76.37
GROUP 6.								
Chicago & Alton	5,359	105.26	98.45	94.96	95.99	107.74	108.96	107.71
Chgo. & E. Illinois	16,978	64.29	65.02	71.54	78.78	76.45	69.44	76.48
Chgo. & N. West	12,459	142.46	143.31	128.68	145.15	141.45	146.84	145.15
Chicago Belt	248	(3)	(3)	439.92	608.27	741.53	935.05	768.72
Chgo. Port. & O.	22,914	102.03	(3)	104.15	98.01	99.13	99.91	98.81
Chgo. Great West	1,593	146.86	(3)	144.01	162.46	179.65	180.64	183.70
C. M. & St. P.	5,893	(2)	(2)	(2)	(2)	187.02	189.15	196.33
C. P. & St. L.	1,024	71.97	62.79	67.32	61.62	59.08	63.67	56.26
C. R. I. & P.	6,610	157.55	(3)	149.71	148.99	154.95	143.68	164.43
C. St. P. M. & O.	1,756	135.20	(3)	131.80	124.41	125.77	139.19	112.07
C. T. H. & S. E.	5,788	(2)	(2)	46.65	62.36	53.17	49.21	53.96
D. B. & A.	1,331	101.62	94.92	95.07	92.05	87.19	85.43	90.61
Elgin, Joliet & E.	11,118	(1)	(1)	114.27	108.31	102.43	109.07	108.62
Great Northern	2,012	179.47	(1)	174.45	172.46	182.43	174.46	168.81

Min. & St. L.	1,286	217.44	219.76	208.12	187.26	164.97	157.01	157.01
M. St. P. & S. M.	845	264.86	272.10	271.89	152.36	148.06	148.28	151.60
Northern Pacific	6,228	126.83	126.81	126.28	120.35	120.94	127.34	131.86
Tol., Peoria & W.	300	(*)	(*)	70.83	72.22	76.11	71.67	86.11
Total				113.60	111.20	114.29	117.86	114.28
GROUP 1.								
St. J. & Gr. I.	89	310.11	241.67	229.21	255.39	251.69	223.89	158.43
Union Pac. (Inc. O. S. L. & O. W.)	6,064	131.23	132.43	162.11	158.83	151.55	152.97	181.40
Total		123.42	132.76	168.08	155.74	153.00	154.00	181.51
GROUP 2.								
C. R. I. & G. (included in C., R. I. & P. group 5).								
Cal. & S. Pac.	2,145	(*)	(*)	151.99	182.54	188.28	188.04	185.06
Den. & Rio Grande	9,129	84.35	87.45	88.77	80.22	87.16	104.74	103.23
Gen. City Southern	1,721	98.18	84.74	92.30	91.83	95.10	97.75	98.14
K. C. M. & O.	1,885	74.48	83.46	92.05	84.98	85.21	78.64	66.53
Midland Valley	1,595	(*)	(*)	60.02	61.96	70.81	45.99	76.03
M. K. & T.	5,753	88.09	93.45	91.27	87.11	99.97	98.41	104.12
Missouri Pacific	13,267	108.46	104.75	104.01	112.82	118.21	115.49	118.41
St. L. & S. W.	10,131	120.69	120.69	120.70	128.80	126.53	127.70	126.81
St. L. & S. W.	10,131	145.03	145.03	143.22	145.16	146.66	138.67	134.84
Term. R. R. of St. L.	None.	(*)	(*)	(*)	(*)	(*)	(*)	(*)
Total				108.11	110.26	115.18	113.78	117.72
GROUP 3.								
El Paso & S. W.	2,517	(*)	(*)	(*)	(*)	(*)	(*)	(*)
Fl. W. & D. C.	347	264.63	248.77	132.43	147.84	181.27	181.20	182.02
Gulf Coast Line	300			213.67	206.33	226.00	200.00	166.67
N. O., T. & M.								
B. S. W. & W.								
O. & W. N.								
S. V. R. & M.								
Int. A. G. N. & M.	909	102.02	94.72	112.51	105.80	97.14	92.20	73.18
La. R. & N. V. Co.	125	160.00	153.40	(*)	146.00	158.80	163.60	148.00
St. L. S. F. & T.								
S. A. & P.	75	431.17	407.79	233.87	364.95	368.00	310.67	255.00
Tul. & Pacific	1,364	196.33	204.91	198.11	194.70	187.10	194.68	193.40
Trinity & B. V.	85	70.69	81.18	92.84	91.78	114.12	68.24	71.76
Total				135.45	136.46	136.18	140.30	111.53

* Included in G. O. L.

* Not received.

* Not received. Wired for report.

* Included in Southern.

* Not available.

* No cars owned.

Car location statements—Continued.

PERCENTAGE OF GONDOLA, COAL, AND COKE CARS ON LINE TO TOTAL OWNED—Continued.

	Cars owned.	Nov. 15, 1916.	Nov. 23, 1916.	Dec. 1, 1916.	Dec. 8, 1916.	Dec. 15, 1916.	Dec. 23, 1916.	Jan. 1, 1917.
GROUP 1A.								
A. T. & S. F.	9,530	136.74	136.86	132.01	130.65	131.40	137.95	135.06
A. T. & S. F. Coast Line (Included in A. T. & S. F.).								
Oregon Short Line, O. W. R. & Nav. Co. (Included in Union Pacific).	3,334	(¹)	(¹)	212.43	211.70	214.76	190.49	173.70
Southern Pacific (Inc. Sunset Central).	743	137.68	137.80	161.91	124.63	180.06	146.83	164.47
L. A. & S. L.	None.	(¹)	(¹)	None.	None.	None.	None.	(¹)
Spokane, Port. & S.	125	577.35	582.67	478.00	496.00	391.00	240.80	182.40
Western Pacific.								
Total.				154.79	152.41	155.29	146.40	
GROUP 11.								
Canadian Govt. Rys. (intercolombia).	1,203	182.96	205.40	204.74	225.85	227.51	228.04	225.44
Canadian Northern.	2,772	(¹)	(¹)	(¹)	(¹)	(¹)	(¹)	(¹)
Canadian Pacific.	3,809	(¹)	(¹)	181.94	169.44	173.41	171.73	170.39
Grand Trunk.	6,969	170.28	166.77	166.68	161.23	172.46	175.74	175.03
Grand Trunk Pac.	1,652	(¹)	(¹)	53.45	55.21	58.08	54.24	55.02
Total.				160.58	156.37	162.88	164.54	163.64

¹ Not available.² Wired for correct figures.³ Not received.⁴ Not received. Wired for report.

EXHIBIT C.

CIRCULAR NO. 3, AMENDING AND INTERPRETING CIRCULAR NO. 1762.

The arrangement made for redistribution of box cars in American Railway Association circular No. 1762, is amended and interpreted as follows:

1. The request to deliver to southern and western connections an excess above box cars received is effective regardless of the distribution of open cars, as under American Railway Association circular No. 1750, the open car equipment is being returned to owners. Roads having either an excess or deficiency in open car equipment are, therefore, expected to comply with request made as to box cars.

2. All railways having in their possession more than their ownership of box cars are required to deliver the specified excess of box cars to southern and western connections regardless of their receipts from northern and eastern connections. Whenever roads in group 4 not covered by American Railway Association circular No. 1762 are in possession of their ownership of box cars they are expected to help their western and southern connections which have deficiencies by delivering to them a 20 per cent excess of box cars above the number received.

3. Roads having in their possession less than their ownership of box cars should deliver to southern and western connections the required excess of box cars above those received when they are receiving from northern and eastern connections the specified percentage of excess. When they are receiving from such northern and eastern connections less than the specified percentage of excess, they are required to deliver to southern and western connections a percentage of box cars above those received equal to the percentage of excess received from their northern and eastern connections. When the northern and eastern connections of such lines are not giving them a substantial excess of box cars above those delivered such deficiency lines should actively solicit such excess deliveries from their connections, and failing to obtain them, should immediately advise the commission on car service.

4. It is not contemplated that intermediate or other railways having a deficiency of box car equipment compared with ownership should retain possession of all box cars received from northern and eastern connections, until their own deficiency is eliminated, but such lines should concurrently, with the receipt of the excess box cars from northern and eastern connections, deliver the specified percentage of excess to their southern and western connections. It is believed, as the interchange with northern and eastern connections have been in excess of those of southern and western connections, that observance of this rule will permit intermediate roads deficient in box car equipment to retain a fair proportion of the box cars received and in turn help their southern and western connections, which may also be deficient in box car equipment, with a substantial part of the box car equipment now being redistributed from eastern territory. The observance of this rule is extremely important, as otherwise roads in the far southern and western territories will be seriously discriminated against, as these lines are being obliged to release open car equipment now being used for box car traffic.

5. The commission on car service renews its advice that embargoes are a necessary part of the machinery to accomplish the purpose of this circular.

EXHIBIT D.

CIRCULAR No. 5

THE AMERICAN RAILWAY ASSOCIATION

THE COMMISSION ON CAR SERVICE

FAIRFAX HARRISON, CHAIRMAN.
W. L. PARK,
E. J. PEARSON,
C. M. SHEAFFER,
W. A. WORTHINGTON.

GEORGE HODGES, SECRETARY.

KELLOGG BUILDING

WASHINGTON, D. C., December 18, 1916.

To All Members of the American Railway Association:

The Commission on Car Service, sitting in Washington in daily consultation with the Interstate Commerce Commission, in an effort to relieve the car shortage existing in certain parts of the country, has made four important requests upon the railroads.

These requests, enumerated below, were formulated in the interest of the public as a whole, and with the knowledge that some roads would be compelled to make sacrifices to comply with them. It was thought, however, that it was absolutely necessary that the railroads themselves should take drastic action, if they were to make any progress in relieving the situation.

The requests issued by the Commission on Car Service as instructions to all railroads of the country follow:

1. Request of November 23, 1916, that all railways should at once return to car owners all open top freight cars, either loaded or empty.

2. Request of November 29, 1916, that all railways which had on their lines more box cars than they owned should, regardless of local requirements, immediately move such excess of cars, loaded or empty, toward the railroads which have less than their ownership of cars. A statement of car location as of November 1st was published at that time.

3. Request of December 1, 1916, that railways should deliver to their western and southern connections certain designated percentages of box cars either loaded or empty, in excess of the number received from those connections.

4. Under date of November 25th, a circular was issued, requesting all Railroads to send location statements of foreign and system cars on their line, making certain separation reports to be made as of the 1st, 8th, 15th and 23rd of each month.

These requests have met with generous and prompt response on the part of a number of roads, but some of the lines have shown much less progress in complying with them than they should; this is shown by the reports received to date by the Commission on Car Service. In general, the excess of open top equipment is located on western lines and the excess of box cars on eastern lines. It is apparent that both classes of lines have been reluctant to return the kind of equipment of which they have an excess unless their deficiencies in other equipment are at the same time relieved. It is equally apparent that if both classes of roads will give their full co-operation in complying with the request of the Commission on Car Service all lines will be mutually benefited.

The Commission is strongly of the view that if any road does not fully and promptly support the program outlined with respect to both open top and box cars such road places itself unfairly in a position of advantage as compared with other railways in the

same territory complying with the instructions of the Commission on Car Service. For this reason the Commission on Car Service now makes such deductions as are possible from the reports received, and draws attention to the lines which apparently are not doing everything possible to return excess equipment to deficiency lines, in the hope that these lines will at once show a marked improvement in their performance.

OPEN TOP EQUIPMENT.

The only statistics available to the Commission on Car Service from which may be deduced the effect of the request to return open top cars to owners are the "Percentage of gondola, coal and coke cars on line to total owned," as reported by the various roads. In studying these figures it must be remembered that roads receiving and not originating coal shipments have on their lines in normal times an excess over cars owned, while roads originating coal traffic normally hold less than their ownership. Regardless of this condition roads having an excess of coal car equipment should have materially reduced such excess following the request of November 23 made by the Commission on Car Service. Comparing the reports of December 8 with those of December 1st, November 23rd and November 15th, the following lines, having an excess above ownership, have not shown the desired improvement in percentage of coal cars on line to total owned:

Road	Nov. 15	Nov. 23	Dec. 1	Dec. 8
Group 1.				
Boston & Albany.....	151.82	143.40	132.84	150.89
Central Vermont.....	208.74	199.02	188.34	222.82
New York, New Haven & Hartford.....	140.87	148.81	156.96	151.51
Rutland Railroad.....	84.39	93.87	86.80	104.83
Group 2.				
Erie.....	117.03	118.35	120.16	119.02
New York Central.....	110.76	118.40	110.18	111.15
Philadelphia & Reading.....	113.78	118.93	114.26	116.15
Group 3.				
Ann Arbor.....	144.89	128.93	142.52	132.15
Chicago, Indianapolis & Louisville.....	93.15	104.63		110.58
Cincinnati, Hamilton & Dayton.....	186.11	187.97	167.65	181.18
Cleveland, Cincinnati, Chicago & St. Louis...	100.90	100.20	113.27	112.96
New York, Chicago & St. Louis.....	110.89	106.40	108.01	113.14
Pere Marquette.....	213.44	189.51	186.11	198.61
Wheeling & Lake Erie.....	181.81		122.65	126.57
Group 4.				
Atlantic Coast Line.....	237.32	226.46	219.21	228.66
Seaboard Air Line.....	109.89	112.43	118.15	114.24
Group 5.				
New Orleans & Northeastern.....	85.77	108.24	138.47	141.12
Group 6.				
Chicago Great Western.....	146.89		144.01	178.48
Great Northern.....	179.47	174.45	172.42	173.46
Group 7.				
Union Pacific (Inc. O. S. L. and O.-W.).....	131.23	132.43	136.59	129.62
Group 8.				
Missouri Pacific.....	108.46	104.75	104.01	112.82
St. Louis Southwestern.....	153.07	145.03	143.22	145.16
Group 9.				
Fort Worth & Denver City.....	264.53	248.77	228.08	252.71
Texas & Pacific.....	196.33	204.91	196.11	194.79
Group 10.				
Southern Pacific (Inc. Sunset-Central).....			212.43	211.70
Western Pacific.....	577.33	582.67	637.33	652.00
Group 11.				
Canadian Govt. Rys. (Intercolonial).....	182.96	205.40	204.74	225.85
Grand Trunk.....	170.98	166.77	166.68	161.23

BOX CARS.

The location statistics of box cars available to the Commission on Car Service are supplemented by reports of box cars interchanged with northern and eastern and with southern and western connections. These interchange reports of box cars for the first eight days in December are overdue in the case of all railways excepting the following and attention is especially drawn to the negligence in this respect of all other lines. In listing the roads sending these reports the percentage of box cars on line to total owned, according to their last report, is given for each line, as well as the percentage of box cars delivered to southern and western connections in excess of those received:

<i>Road.</i>	<i>Per Cent of Box Cars on Line to Total Owned Dec. 8th.</i>	<i>Excess of Deliveries, Per Cent.</i>
Group 1.		
Boston & Albany.....	114.94	-5.58*
Boston & Maine.....	158.51	37.21
Central Vermont.....	99.43	1.05
Maine Central.....	121.58	6.70
New York, New Haven & Hartford.....	98.53	24.90
Rutland.....	72.57	24.67
Group 2.		
Central Railroad of New Jersey.....	116.90	11.55
Lehigh Valley.....	125.18	-14.35*
New York Central.....	133.91	4.07
Central New England.....	75.35	17.15
Delaware, Lackawanna & Western.....	105.83	20.45
Pennsylvania (Inc. Penna. Co.).....	141.02	15.66
Philadelphia & Reading.....	187.39	1.10
Western Maryland.....	405.43	97.36
Union R. R.....	.....	15.33
Group 3.		
Michigan Central.....	115.59	4.25
Wabash.....	140.49	2.74
Toledo & Ohio Central.....	162.23	-5.80*
Lake Erie & Western.....	72.36	-13.14*
Pittsburgh & Lake Erie.....	87.54	19.19
Vandalia.....	141.14	10.48
Group 4.		
Carolina, Clinchfield & Ohio Ry.....	72.79	63.68
Coal & Coke.....	91.50	.....
Southern.....	92.29	13.07
Group 5.		
Atlanta & West Point.....	92.76	20.17
Central of Georgia.....	80.66	6.30
Illinois Central.....	65.18	4.11
Nashville, Chattanooga & St. Louis.....	53.74	7.13
Group 6.		
Chicago & Alton.....	83.53	-2.71*
Chicago & Eastern Illinois.....	83.51	-11.89*
Chicago, Burlington & Quincy.....	77.46	3.40
Chicago, St. Paul, Minneapolis & Omaha.....	93.16	2.20
Northern Pacific.....	95.92	13.56
Toledo, Peoria & Western.....	84.92	30.28
Group 7.		
Union Pacific (Inc. O. S. L.—O. W. R. R. & N.).....	70.79	7.44
Group 8.		
Colorado & Southern.....	50.85	1.28

* Receipts were in excess of deliveries.

It is clearly apparent from the above that the following railways having an excess of box car equipment have not complied with the request of the Commission on Car Service to deliver a designated excess of box cars to southern and western connections above the number of box cars received from such connections:

BOSTON & ALBANY
MAINE CENTRAL
LEHIGH VALLEY
PHILADELPHIA & READING
NEW YORK CENTRAL
MICHIGAN CENTRAL
WABASH
TOLEDO & OHIO CENTRAL

The following additional railways, which are delinquent in sending in their reports of box cars interchanged with connections, are not satisfactorily reducing the excess of box car equipment on line as compared with number owned, according to reports made to the Commission on Car Service:

Road.	Nov. 15	Nov. 23	Dec. 1	Dec. 8
<i>Group 2.</i>				
Baltimore & Ohio.....	123.54	123.72	124.69	129.33
Erie.....	117.77	116.58	121.65	122.47
Long Island.....	690.97	633.15	644.75	695.40
New York, Ontario & Western.....	214.86	210.71	215.85	202.19
New York, Philadelphia & Norfolk.....	119.05	131.28	141.08	140.07
<i>Group 3.</i>				
Ann Arbor.....	97.07	91.29	111.40	117.65
Grand Rapids & Ind.....	128.80	125.73	139.75	135.78
New York, Chicago & St. Louis.....	117.78	121.98	135.96	126.70
Pere Marquette.....	121.72	119.31	119.86	117.38
Wheeling & Lake Erie.....	288.79		305.44	291.34
<i>Group 4.</i>				
Chesapeake & Ohio.....	146.91	141.92	144.69	181.38
Norfolk Southern.....	93.66	97.57	109.64	111.93
Seaboard Air Line.....	107.93	99.33	103.66	108.06
<i>Group 5.</i>				
Florida East Coast.....	136.22	140.99	142.04	161.96
<i>Group 6.</i>				
Duluth, South Shore & Atlantic.....	138.24	121.46	131.65	124.70
<i>Group 8.</i>				
Kansas City Southern.....	116.19	94.89	112.04	113.40
<i>Group 9.</i>				
International & Great Northern.....	228.43	218.66	234.16	204.76
<i>Group 11.</i>				
Can. Govt. Rys. (Intercolonial).....	101.49	108.69	113.23	117.33

LOCATION REPORTS.

Reports overdue from the following Railroads have failed to reach the Commission: Delaware & Hudson, report of box cars for December 8th, and all reports for all dates as to open cars.

Louisville & Nashville, all reports for December 8th.

Chicago, Milwaukee & St. Paul, all reports for December 8th, and also reports for all dates as to the separation of box and open cars.

Chicago and Northwestern, all reports for December 8th.

M. K. & T., all reports for December 8th.

El Paso & Southwestern, all reports for all dates as to the separation of box and open cars.

Chicago Belt, all reports for all dates.

Chicago, Rock Island & Gulf, all reports for all dates.

Midland Valley, all reports for all dates.

Spokane, Portland & Seattle, all reports for December 8th.

Canadian Northern, all reports for all dates.

Grand Trunk Pacific, all reports for all dates.

THE COMMISSION ON CAR SERVICE.

EXHIBIT E.

NEW YORK, January 11, 1917.

SPECIAL REPORT OF INDIVIDUAL MEMBERS OF COMMISSION ON CAR SERVICE.

To the members of the executive committee:

It is well established that the observance of car service rules with respect to returning equipment promptly to owners has in the past been to a great extent superseded by use or appropriation of cars by individual lines governed only by expediency. A disregard for the spirit and letter of the rules on the part of a great many railroads has gradually led to an unsatisfactory observance of such rules in so far as they relate to the railroads collectively. This brought about a condition which rendered it impossible for some of the roads that had amply provided themselves with sufficient equipment to perform their obligations to the shippers directly served by them and their duties as carriers to the general public.

The result of the inability or indisposition of the railroads to regulate these matters on an equitable and just basis was reflected by considerable discontent and numerous complaints from shippers in certain localities. Because of the existing situation the Interstate Commerce Commission considered it necessary to take cognizance of the matter and institute an investigation with specific reference to coal cars, but it was extended to include all classes of equipment. This investigation was initiated by Commissioner McChord in an informal manner in Louisville, Ky., on November 3, 1916. From the testimony of railway officials called before the Commissioner and from the evidence of certain shippers he felt justified in requesting the chief executives of the railroads to in some way evolve a plan by which the existing manifestly unfair distribution of freight equipment might be promptly corrected and its recurrence prevented.

In the midst of the transpiring of these events the fall meeting of the American Railway Association was held on November 15, 1916, in New York, having been transferred from Denver because of the serious car situation. At this meeting the association adopted by resolution certain changes in car service and per diem rules to better secure the use of equipment by car owners, providing also penalties for their enforcement by the commission on car service, and these rules were subsequently ratified by letter ballot of members of the association.

The regular meeting of the American Railway Association had been preceded by a conference of executives which had informally approved the action confirmed by the association on November 15. On that date the association named an emergency committee (for a short time known as the conference committee on car efficiency) to act with Commissioner McChord at Washington in dealing with the situation. It was stated at that time by the president of the association that very arbitrary action would have to be taken by this committee and that it was apparent a crisis had been reached where the railways would have to demonstrate their ability to properly handle their own affairs or some other body would do it for them.

This special committee, with the then existing commission on car service, met Commissioner McChord at Louisville, at which time the Commissioner was informed that the American Railway Association had delegated full authority to its emergency committee to handle the car interchange question and to cooperate with the Interstate Commerce Commission at Washington in obtaining reliable information and

applying the proper remedies. The members of the emergency committee then took up the work at Washington and until January 1, 1917, prosecuted it in close cooperation with the Interstate Commerce Commission, Mr. F. B. Dow, attorney of that Commission, sitting constantly with the railway committee. Through Mr. Dow, Mr. McChord and the other Commissioners were kept informed of the details of the work.

One of the first accomplishments was a joint conference between a representative of the Interstate Commerce Commission, representatives of the shippers, and the emergency committee, which resulted in the approval by the Interstate Commerce Commission of the filing of tariffs, effective on short notice, providing for progressive demurrage, and, by the substantial increase in demurrage rates thus secured, delay to cars at destination will be materially reduced. During the deliberations on this very important matter the question of an increase in the per diem rate was brought up and it was clearly evident that the powers possessed by the emergency committee, which were subordinated to those of the commission on car service, were unsatisfactory to the Interstate Commerce Commission. Approval by that Commission of the higher demurrage had been predicated upon improved car distribution as between the railways and upon an imposition of a much higher per diem rate. As there was considerable difficulty and delay in securing approval of the increase in per diem from 45 cents to 75 cents, the situation was brought to the attention of the executive committee, which committee was impressed with the necessity of investing the emergency committee with increased powers and greater initiative. The executive committee consequently abolished the special emergency committee and reconstituted the commission on car service, which then became the cooperative committee working with the Interstate Commerce Commission at Washington. The only change in personnel between this committee and the former emergency committee was in the chairman, who was the chairman of the former commission on car service.

This reconstituted commission on car service resumed its activities and by co-operation with the Interstate Commerce Commission brought about a conference between the representatives of the shippers and railway traffic officials with a view of establishing reconsignment tariffs that would eliminate well known and long continued abuse of this privilege. The final recommendations of the carriers have been filed with the Commission, which will submit them to shippers, and this question is still a pending one between the commission on car service and the Interstate Commerce Commission.

The commission on car service also succeeded in bringing about a uniform agreement between Atlantic and Gulf ports as to reduction in free time at seaboard. It has not been thought expedient to request the Interstate Commerce Commission to approve the filing of tariffs embracing these reductions to go into effect upon less than statutory notice, but these tariffs will be filed in the usual manner.

Concurrent with these events the commission on car service obtained from the railroads weekly reports showing comparisons between cars on line and cars owned, car accumulation reports, status of embargoes, reports of car interchanges, and other data bearing on excess equipment, its location, physical condition and employment. Predicated on these statements the commission on car service issued divers requests directing the readjustment of equipment as between the carriers.

Also associated with these activities the commission on car service performed its duty to the American Railway Association as outlined in the per diem and car service rules. It endeavored to make its activities conservative but effective through the establishment of agencies from which could be obtained first-hand knowledge as to conditions existing on certain railways which appeared from the reports to be abnormal.

It was found that the Interstate Commerce Commission had in the field inspectors who were reporting directly to that Commission on cases of car abuse, and as the com-

mission on car service also had inspectors at work, special arrangements were made by which the inspectors of the Interstate Commerce Commission and those of the American Railway Association might work in harmony for the common good.

Many complaints reaching the Interstate Commerce Commission by mail and telegraph from shippers and from individual railways were turned over to the commission on car service for investigation; it was possible to show the Interstate Commerce Commission that many of these complaints were unfounded and that car abuse was in some cases apparent only, and it is gratifying to note that through the activities of the commission on car service there was a marked decrease in the number of such complaints received. The Interstate Commerce Commission was freely furnished with statistics of car location, car accumulations and car interchanges, which were available from special reports made by the carriers to the commission on car service.

In connection with the work of car distribution, representatives of individual carriers appeared on request before the commission on car service, which went over their local situations in detail and impressed upon them the necessity of giving their whole support to the work of redistributing the cars to sections where most needed, regardless of their traffic conditions. It was found necessary in many of these cases to dispose of countless reasons advanced why the desired help could not be extended, and in nearly every instance promises were secured that the individual carrier would give its earnest cooperation. Close attention was given to the situation at large cities where cars had accumulated under load and the formation of local committees was secured to adjust such situations as well as to improve conditions at seaports where a large number of cars were being held.

In the matter of car relocation, the commission on car service faced a very difficult problem. Because of the unusual drift of traffic, as well as the past neglect of the carriers themselves to strictly observe car service rules, the equipment had been badly scattered, the excess of open top equipment being largely in the west and the excess of box car equipment principally in New England and the east. On account of the shortage of coal cars threatening a fuel famine, Commissioner McCord had already notified the roads to return open top cars, and one of the first acts of the commission on car service was to issue its own request to the carriers in confirmation of the notice of the Commissioner. Because of threatened serious loss to the fruit industry, the commission on car service issued a similar request to return fruit refrigerator cars to home territory.

The diversion penalty on freight cars was adopted by a large majority vote of members of the American Railway Association, but it was found expedient to postpone its effective date until January 1 so that the commission on car service might have time to comprehensively analyze from current reports the existing situation.

As the commission on car service, in confirmation of the notice of Commissioner McCord, had already requested the return of open top cars to owners and had also made a similar request with respect to refrigerator cars, there were no grounds for further postponing the diversion penalty as to such classes of equipment and this penalty, by rule of the association, went into effect January 1, 1917. The commission on car service feels that it should materially aid in accomplishing the result desired by the Interstate Commerce Commission in readjusting the open car situation.

In dealing with the box car situation, the commission on car service gave careful consideration to the means that might accomplish the desired result in the shortest space of time. It would have been possible to have issued an order similar to that covering open top and refrigerator cars and require the return of box car equipment to owners, not suspending the diversion penalty as to such equipment. The box car equipment, however, was very widely scattered as to ownership, some lines having as low as one-tenth of home box cars on home rails. Under these conditions the imposition of the diversion penalty would have imposed such a degree of car ineffi-

ciency through restricting the available car supply as to seriously increase the existing car shortage. Under such an order also the only equipment which would be available to move to western and southern roads would be their own cars, many of which were tied up under load or were upon the lines of their immediate neighbors in the same territory or upon roads which did not have an excess of box car equipment above ownership. An attempt was, therefore, made to shift box cars in large lots without regard to ownership, first getting the excess of such equipment out of New England territory and requiring lines between Chicago and New York to deliver a specified excess of box cars to western and southern roads. Had the commission on car service received the immediate assistance of every one of these lines, as it had a right to expect, and if these lines had shown a disposition to make some sacrifice of their own interests to help the deficiency roads, many of which were in a really desperate condition, this policy would have resulted at once in a large redistribution of the box car equipment. Some of the roads have cooperated to a large extent, some have done something in the desired direction and some have done very little. The commission on car service can not feel any responsibility for the failure of such roads, members of the American Railway Association, for not doing their share in meeting the situation with which the railways as a whole are confronted. The undersigned members of the commission on car service feel that in adopting their policy, both as to open top and box car equipment, they were acting in accordance with their best judgment and with the sole desire of securing a readjustment of these cars so that the car owners might receive as promptly as possible the number of cars they normally have on their lines.

Because of complaints which were coming to it, the Interstate Commerce Commission called a formal hearing December 28, at which the roads were required to show cause why certain mandatory orders should not be issued by that body. While differences of opinion were expressed, the railways were practically unanimous in the belief that such an order, carrying with it the statutory fine of \$5,000 for each violation of a specific order of the Interstate Commerce Commission, would be entirely too drastic and would seriously confuse the situation and make a bad matter worse. The opinion of the commission on car service was presented to the Interstate Commerce Commission in part as follows:

* * * certain salient facts stand out as reasons for expecting the more prompt movement of cars in the future; namely, the increased per diem; progressive demurrage; and diversion penalty, and that by reason of emergency relocations of equipment, certain car service rules have not been made applicable, and that in the judgment of the commission on car service, no code of rules could be prescribed by the Interstate Commerce Commission applicable to all of the railroads which would properly improve the immediate situation; that it was the purpose of the American Railway Association through the commission on car service to continue the constant supervision of the car service practices throughout the country, and to develop further experience, devoting itself, specially, at all times to extraordinary effort to relieve conspicuous congestions and shortages which interfere with the largest measure of car efficiency, asking respectfully that the proposed order be held in abeyance by the Interstate Commerce Commission at least until March 1, at which time a report could be made of experience under the new rules and present practices and a foundation laid for more intelligent disposition of the question on a permanent basis.

Following this meeting the commission on car service was instructed by the executive committee to move its headquarters to New York, and at its first meeting at that point was verbally notified by the general secretary that its activities should be suspended until the meeting of the executive committee on January 11.

As to the future work of the commission on car service, whilst there has been improvement in the general car situation, much remains to be done. The undersigned members of the commission on car service strongly urge that accomplishment of effective results in redistributing cars and in eliminating car delay, for which carriers or shippers are responsible, depends entirely upon the railway committee having the confidence and cooperation of the Interstate Commerce Commission, as well as upon the unanimous and united support of every member of the American

Railway Association. The Interstate Commerce Commission has already recommended in its annual report the taking over of the regulation of the interchange of cars and two bills have been introduced in Congress for the same purpose. We believe, however, if the Interstate Commerce Commission can be convinced that the railways themselves can successfully cope with any situation that may arise with respect to car shortage or redistribution of cars so that shippers everywhere throughout the country may have equal opportunity in the use of equipment and so that the shippers on a few railways may not receive undue advantage, the American Railway Association will be permitted by the Interstate Commerce Commission to retain control of the situation. It is essential, however, that the Interstate Commerce Commission shall be made to feel that the railway representatives who may be selected to cooperate with it will be clothed with the necessary authority to enforce their acts and that they should be put in a position to reach a prompt and final decision on matters which may be brought up with them from time to time by the Interstate Commerce Commission.

The members of the commission on car service consider it their duty to inform the executive committee that, in their opinion, we are confronting a serious crisis. The transfer of the headquarters of the commission on car service from Washington to New York would undoubtedly have been entirely satisfactory to all members of the commission on car service had the change met with the full acquiescence of Commissioner McChord and the other members of the Interstate Commerce Commission and if Mr. Dow continued to sit with the railway representatives here. From all information it has been possible to gather, the change in location is very unsatisfactory to Commissioner McChord, and there is no hope of either himself or Mr. Dow attending our future sessions. It would be unprecedented for the Interstate Commerce Commission to turn over this duty to some other Commissioner in the hope that he would serve on the committee of railway representatives.

The members of the commission on car service feel that the results already accomplished are worthy of the support and commendation of the American Railway Association, but have grave doubts of the efficacy of the future efforts of any railway committee acting independently without the cordial cooperation of the Interstate Commerce Commission. It is not to be expected that that Commission will drop its own investigation, and it is much to be regretted if complaints which will continue to come directly to the Interstate Commerce Commission may be handled by that Commission's inspectors without reference of such matters to the commission on car service. Misunderstandings of conditions, which might otherwise be easily explained, are bound to occur, and the final result of the dissociation may be the issuance of drastic orders that might possibly be prevented through the close association that should exist between the work of the commission on car service and that of the Interstate Commerce Commission with respect to the same subject matter.

(Signed)

W. L. PARK,
E. J. PEARSON,
W. J. WORTHINGTON.

ORDER.

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 18th day of January, A. D. 1917.

No. 9284.

CAR SUPPLY INVESTIGATION.

It appearing, That by order dated November 4, 1916, the Commission, upon its own motion, entered upon a general investigation covering all sections of the United States, concerning the supply, exchange, interchange, and return of freight cars, and all rules, regulations, and practices relating thereto, with a view of entering such order or orders as the Commission might deem appropriate, and that investigation of the matters and things involved has been had, and that the Commission has, on the date hereof, made and filed its report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof;

It further appearing, That the said order dated November 4, 1916, was served upon all the carriers by railroad subject to the act, in the manner provided by law, said carriers being hereinafter referred to as respondents:

It further appearing, That the present car service rules of respondents, stated in Exhibit A, appendix to the report herein, are unreasonable to the extent that they differ from the car service rules found reasonable and stated in a subsequent paragraph of this order;

It further appearing, That the practices of respondents in failing to observe the present car service rules, stated in Exhibit A, appendix to the report herein, with regard to the return of foreign open-top coal and coke cars and railroad owned or controlled refrigerator, heater, ventilated, and insulated cars, to the extent that those rules are not modified by the rules found reasonable, stated in a subsequent paragraph of this order, are in violation of section 1 of the act:

It is ordered, That the above-named respondents be, and they severally are hereby, notified and required to cease and desist, on or before February 21, 1917, and thereafter to abstain, from said violations of the act to regulate commerce.

It is further ordered, That respondents be, and they are hereby, notified and required, on or before February 21, 1917, to establish, and thereafter to maintain, and observe the following car service rules, which are found to be reasonable:

1. All foreign open-top coal and coke cars, and all foreign railroad owned or controlled refrigerator, heater, ventilated, and insulated cars received under load may be forwarded to destination; when original lading is removed, or when received empty, they must be returned to their owners, either loaded or empty—

- (a) Direct, if belonging to direct connections;
- (b) Through the proper home route, if belonging to other than direct connections.

(NOTE.—The home road shall have the right to demand the return of its empty cars at the junction point where delivered loaded.

This right does not apply to cars offered home for repairs under the provisions of M. C. B. Rule 2.)

2. The proper home route for cars belonging to other than direct connections includes the following deliveries only:

- (a) Loaded, consigned (via any route) to a destination on the home road;
- (b) Loaded, consigned (via any route) to a destination on a direct connection of the home road; or
- (c) Loaded, consigned to a destination on the road from which originally received, if such movement is in the direction of home; or
- (d) Empty, to the road and at the junction point from which originally received.

3. (a) Loaded cars may be delivered to switching roads to be unloaded within the switching district. Such deliveries shall be indicated on the junction report by the words "for unloading."

A car received loaded in switching service, when original lading is removed, must be returned to the home road, loaded or empty, if a direct connection within that switching territory; otherwise, unless it home routes from the switching line to some other road, it must be returned to the delivering road, loaded or empty, in accordance with rules 1 and 2.

(b) An empty foreign car may be delivered to a connecting road to be loaded within the designated switching limits and returned. Such deliveries shall be indicated on the junction report by the words "for loading."

The road delivering the car to the switching road must in all cases specify loading, route, and destination, which must be in accordance with rules 1 and 2.

The switching road must comply with the instructions of the delivering road.

4. These rules do not apply to cars reconsigned with original lading under duly filed and published tariffs until the original lading has been removed therefrom.

5. Any delivery of a foreign open-top coal or coke car or railroad owned or controlled refrigerator, heater, ventilated, or insulated car, except as provided in these rules, is a diversion.

It is further ordered, That this order shall continue in force from the date when it shall take effect until May 1, 1917.

By the Commission.

[SEAL.]

GEORGE B. MCGINTY,
Secretary.

Senator McLEAN. Your suggestion that the Director General be given power to control shipments represents existing conditions in Canada, does it not?

Mr. WALTER. I am not able to say, Senator.

Senator McLEAN. You do not know about that?

Mr. WALTER. No.

Senator McLEAN. I think that that rule has been adopted there, and that it has worked very well.

Mr. WALTER. From what little practical experience I have had, I have no doubt that that power properly exercised will clear up some of the difficulties or most of the difficulties now in effect.

Senator KELLOGG. Well, he has that power now, has he not?

Mr. WALTER. I think he has, but I wanted to make it clear, Senator, that the act to regulate commerce ought to remain just as it is written, with that qualification.

Senator KELLOGG. The shipper does not exercise the power to route freight since Mr. McAdoo has been appointed?

Mr. WALTER. I take it that is so.

Senator KELLOGG. He has absolute power to route freight now?

Mr. WALTER. I understand so.

Senator McLEAN. My point was that all the power lies in the Government of Canada over the shipments. They let the railroads control themselves, but they control the shipments instead of the carriers.

Senator KELLOGG. Do you think the pooling clause of the Interstate Commerce Act should apply during the management by the Government of all of these railroads?

Mr. WALTER. I think it will make no difference, if the Director General is allowed to route the freight. In such a case there is nothing which tends or causes the carriers to exercise an untoward effect in putting on their rails what ought to go on somebody's else. That is all that the pooling clause is. It may very well be repealed. I think it might have been repealed years ago without any hurtful effects.

Senator KELLOGG. Yes, I thing so too. Where do you understand the power to fix rates now is, in the commission or in the Director General.

Mr. WALTER. I have no doubt that it lies in the Interstate Commerce Commission.

Senator KELLOGG. To-day?

Mr. WALTER. To-day.

Senator KELLOGG. Then it does not need any additional legislation?

Mr. WALTER. There is doubt, and there is a contrary assertion of power by the Director General, or his advisers, and I think that twilight zone ought to be removed.

Senator KELLOGG. As I understand it, Mr. Anderson, a member of the Interstate Commerce Commission, who appeared before us, thinks the power is in the Director General.

Commissioner ANDERSON. Yes.

Mr. WALTER. I disagree with him, as a matter of law.

Senator KELLOGG. And as I understood him, he thinks the power should remain in the Director General.

Mr. WALTER. I disagree with him on the question of policy.

Senator KELLOGG. I do not exactly know what the opinion of the other members of the commission is.

Mr. WALTER. May I make this observation there, Senator? The members of the Interstate Commerce Commission, some of them, are groping. They can not tell where their power is. They want to do everything that the law requires of them, and so I think in justice to them, whether they agree with me or agree with their associate, that you ought to preserve definite language, so everybody will know what the law is.

Senator KELLOGG. That condition of groping, you know, is not confined to the Interstate Commerce Commission.

Mr. WALTER. I will admit that.

Senator KELLOGG. As I understood you, you thought the power of the various State commissions should also remain as now?

Mr. WALTER. Yes, sir; because the Supreme Court's decision in the Shreveport case has brought about very nearly complete uniformity.

Senator KELLOGG. That decision is simply this: That if a State rate, or a rate fixed under State authority, conflicts or would nullify an interstate rate, or the effect of an interstate rate fixed by the Interstate Commerce Commission, the State rate must go to the wall, so to speak?

Mr. WALTER. Yes; if the Interstate Commerce Commission has found that the maintenance of the two different rates unjustly discriminates against persons, places, or traffic.

Senator KELLOGG. That is under the superior power, of course, of the Federal Government?

Mr. WALTER. That is right.

Senator KELLOGG. While the roads are being managed by the Government itself, as a Government institution, do you think the State commissions should be allowed to fix any parts of the rates on the Government property?

Mr. WALTER. I do, Senator, for this reason: I do not understand that the Government has taken possession of the railroads as it would take possession of a piece of property and erect a building thereon. My thought is that all the possession they have is the possession to operate the freight thereon, and that you leave to the Interstate Commerce Commission and to the State commissions the exercise of all functions not in conflict with the exercise of the power of movement.

Senator KELLOGG. Of course the Government has not taken title to the railroads, because the title of their property remains in the various corporations, but the President's proclamation, and the language of the act under which the proclamation was made, probably justifies the President in saying that he took over the possession of the railway properties of the country. Of course that possession has been taken through the various corporations, but if the Government has the constructive possession of the railways of the country and is operating them as a Government institution, do you think any power except the Federal power should fix the rates and direct the operation of lines in the country?

Mr. WALTER. Viewing the conditions as they are now, I will say, yes, that the State commissions ought to be preserved, for these reasons, Senator, if you will permit me a little bit of a long answer. In the first place, it takes a man with some experience and judgment to determine what the reasonable rate is. The State commissions are just as patriotic, as energetic and desirous of proper results as anybody else. I would leave to them the exercise of their power, trusting in their doing the right thing, with this observation: War is going to cost the railroads something, but it is a service for all the people, and therefore if there is something to make up when the war is over I would have it come from all the people and not from the man who makes the shipment of corn, or wheat, or cattle, merchandise, ore, or something of that sort.

Senator KELLOGG. I am just coming to this point. While the railroads have been in the hands of the owners, the corporations, if a State railway commission fixed an intrastate rate, which was unreasonably low so as to be confiscatory, the remedy, of course, of the railway company was to bring a suit to enjoin the rate as confiscatory, the taking of its property without due process of law, or compensation?

Mr. WALTER. Yes.

Senator KELLOGG. When the road has been taken over by the Federal Government and is in possession of the Federal Government, the property and the powers being taken away from the railroad company, and the State commissions make a rate unreasonably low and confiscatory of the property of the Federal Government, who would bring such a suit?

Mr. WALTER. The president of the railroad or the railroad corporation who is acting.

Senator KELLOGG. If the railroad corporation is taken out of their control, they can not bring a suit, can they?

Mr. WALTER. My understanding is that they can.

Senator KELLOGG. Property over which they have no control, the possession of which and the operation of which is in the Federal Government?

Mr. WALTER. Certainly. My understanding is that to-day they are maintaining suits, and that they have a perfect right to maintain suits under the law that you propose, under the President's proclamation, and under the Director General.

Senator KELLOGG. Do you understand that they are maintaining suits to enjoin the making of rates by State commissions?

Mr. WALTER. Suits are pending of that sort; yes, sir.

Senator KELLOGG. I know, but are they bringing any new suits? Those suits were made to enjoin rates, of necessity, long before this order was made?

Mr. WALTER. I know of no new suits.

Senator KELLOGG. But suppose a State commission should now make a rate, would you say that the railroad could bring a suit to enjoin that rate when it has no interest whatever in the common carrier, when the Federal Government collects the rates, when the Federal Government guarantees the railroad its income and its property?

Mr. WALTER. I insist that it could, certainly, if the Director General makes it, but let me make this observation: That that situation is not created or caused by any condition growing out of the war. What you have had already as to that matter will not be changed by the war.

Senator UNDERWOOD. To-day, under the Director General the Government, to all intents and purposes, is the owner of the railroad and the party in interest as to its revenue. Before this order was made, the stockholder was the party in interest, but the stockholder has no more interest in the rates, because the rates are being paid by the Federal Government.

Mr. WALTER. That is true, Senator.

Senator UNDERWOOD. Then can a man who has not got a money interest in the property in fixing the rate, maintain a suit?

Mr. WALTER. Yes. But that is not necessary, in answering your question. Here is the proposition: Whenever a State government, or the United States as a government, enters upon a business of any kind, it thereby puts itself upon the same plane with anybody else. The Director General by showing that he had an interest could maintain a suit the same as any other individual. That is the law of the various supreme courts of the States.

Senator UNDERWOOD. But you can not sue a government without its consent. The Government may occupy the status that the railroads did before, but you can not sue the Government without the Government's consent to be sued.

Mr. WALTER. The Government can sue anybody and recover anything that it is lawfully entitled to.

Mr. UNDERWOOD. But suppose the shipper is not satisfied with the rate? How is he going to sue the Government?

Mr. WALTER. You have a measure now on the statute books to bring a suit to enjoin an order of the Interstate Commerce Commission to take care of that very situation. In other words, he goes to the commission, or to the State commission, and the laws of the United States, and of most of the States, provide that a shipper can bring a suit to set aside an order which is unlawful.

Here is a case where the Director General wants to sue. He can sue and he can make his case if he is entitled to bring the suit as the one in control or in operation of the railroads. If he can not, the railroad can or the stockholders can. I would have no doubt that the lawyers representing the Director General, or representing the carriers, could find ample forums in which to bring any suit of that sort they wanted to bring.

Senator KELLOGG. Right there, the right of the railroad company to sue a State commission to enjoin the rate as confiscatory is exactly

the same right that the railroad company has to sue in the Federal court to enjoin the rate made by the Interstate Commerce Commission. There is no difference, is there?

Mr. WALTER. Not in effect.

Senator KELLOGG. They are both based on the ground that the rate is confiscatory of their property.

Mr. WALTER. Yes, sir; deprives it of its property.

Senator KELLOGG. When the Director General is in control of the railways and operating them, could the stockholders or the railroads bring a suit to enjoin a rate which he should make, or which the Interstate Commerce Commission should make if they were directed to?

Mr. WALTER. I should say so, under the Constitution.

Senator KELLOGG. What interest have they got in it? The Government has got the road and is making a guarantee of the earnings.

Mr. WALTER. But if the guarantee depends in some way upon the revenue which the road collects, or the Director General collects, the stockholder certainly has an interest in that. If there is any doubt about that, Senator, you can easily cover it. I would not give the Director General any power to make rates. I would say that the Interstate Commerce Commission should do that.

Senator KELLOGG. Suppose the Interstate Commerce Commission makes them. Could the railroads sue to enjoin a rate which the Interstate Commerce Commission should make on a road being operated by the Government?

Mr. WALTER. Certainly, I should say so. They ought to have a right to do it.

Senator KELLOGG. That is all I wish to ask.

Senator CUMMINS. I want to ask a question or two about the first section and especially about that part of it upon which you put some emphasis, namely, that provision which is in the following language:

Provided further, That no Federal taxes in excess of taxes assessed during the year ending June thirtieth, nineteen hundred and seventeen, shall be charged against revenue in computing such standard return.

It may be perfectly clear to everybody else but it is not clear to me at all. You understand that these railroads being in possession of the Government, being operated by the Government, all of the money which comes in from operation of the property of which the Government has taken possession, belongs theoretically at any rate to the Government, and the mere fact that it is permitted to remain in the hands of those who have heretofore been operating the railroads, makes no difference in the legal status of the earnings of these properties.

Mr. WALTER. That is perhaps so. If you will allow me, Senator, I will illustrate by figures how the amendment would work out as it is printed.

Senator CUMMINS. Just wait a moment until I get to that. The standard return which is to be guaranteed or given, paid to any particular company, is to be determined with reference to the income or expenses of the company during the three years 1915, 1916, and 1917. Suppose now, with any given company, taking the revenues and the expenses of that company for these three years the Govern-

ment agrees to pay the company \$1,000,000 a year. Now, that sum is fixed, is it not? So long as the Government remains in possession the amount which is to be paid to that company can neither be more nor less than \$1,000,000. The taxes which are laid upon this property, and which have been taken into consideration in determining that the Government shall pay this company \$1,000,000, are the taxes that were levied or laid upon the property prior to the 30th of June, 1917.

Mr. WALTER. That is right.

Senator CUMMINS. Am I right about that or wrong about that?

Mr. WALTER. That is my understanding.

Senator CUMMINS. The act as it is now says that no Federal taxes in excess of taxes assessed during the year ending June 30, how could any taxes be deducted from a period that ends with June 30, 1917, that were levied after June 30, 1917?

Mr. WALTER. Because the act of October 3rd became retroactive and levied taxes during the entire year, and you and I on our incomes, if they are high enough to be subject to the tax, have to make arrangements to meet that tax, notwithstanding we never expected it up until say October.

Senator CUMMINS. But after all, those are taxes that are laid on the property for the year 1917 up to June 30th?

Mr. WALTER. Yes.

Senator CUMMINS. They have been deducted from the income or revenue of the company that we have in mind, a suppositious company, in order to arrive at the standard return. They have been deducted.

Senator UNDERWOOD. Senator, can I interrupt you a minute to make a suggestion? My understanding of the law is that the tax levy is for the calendar year. The income tax which will be paid on the incomes received during 1917 is returnable between now and the 1st of March, and payable before the 1st of June, but it is for the calendar year that the tax is levied and not for the fiscal year.

Mr. WALTER. That is true.

Senator CUMMINS. But the act says, "taxes in excess of those laid upon the property for the year ending June 30, 1917."

Senator UNDERWOOD. I was not referring to the language of that statute.

Senator CUMMINS. Those are the taxes that are to be deducted from the revenues of the company in order to arrive at the amount the Government shall pay.

Senator UNDERWOOD. I suppose in the drafting of the statute that it was contemplated that the tax year ended in June. The tax year ends in January.

Mr. WALTER. May I illustrate that?

Senator CUMMINS. I wish you would, because the matter is very far from clear in my mind.

Mr. WALTER. Let us take a property which had a gross revenue for three years ending with the period here, of \$9,000,000, and all of its expenses which are deductible from the gross revenue by which you determine the railway operating income except the excess war taxes, for the three years, were \$5,700,000. The excess war taxes which occurred for the six-month period were \$300,000. That added to your other expenses gives you \$6,000,000.

Senator WATSON. What six-month period?

Mr. WALTER. Ending June 30, 1917.

Senator WATSON. The six months ending with the 30th of June?

Mr. WALTER. Yes. We will assume for the year it was \$600,000; for six months it would be \$300,000. That gives you a total expenditure of \$6,000,000 for the three years, leaving you \$3,000,000 for the three-year period, and the average, or the standard rate of return, would be \$1,000,000 on that property. Let us take the same property for 1918 and apply this amendment.

Senator CUMMINS. Why do you go to 1918 at all?

Mr. WALTER. I am going to show what you would pay next year. and I am showing that you are guaranteeing against them paying any excess taxes.

Senator CUMMINS. If we are guaranteeing the payment of \$1,000,000 up to June 30, 1917, nothing that we can thereafter do will affect the amount that we have agreed to pay that company.

Mr. WALTER. Yes, sir; I will show you how it would. Take their gross revenues, \$3,000,000, and their expenses for the same year including all except the war taxes, the United States war taxes, at the same rate as for the other three years, \$1,900,000. The war taxes for the year 1918 will be \$600,000. That gives you, in order to make that up, a total expense of \$2,500,000.

Senator CUMMINS. What do you want to find that for at all?

Mr. WALTER. That will give you \$2,500,000 to deduct from their gross revenue, leaving \$500,000 that they have left as an operating income, but you have guaranteed them the average of the three years which is \$1,000,000. Therefore, you must make up the difference, which is \$500,000, or just \$100,000 less than their excess war taxes.

Senator CUMMINS. Suppose, to reduce it to simplicity, that on the 31st of December we had taken this property—we took this property and put the present railway organizations completely out of business, they had nothing to do with the operation of the property after that time, they kept no books, we kept the books, it was our income, not theirs, and then we come to ascertain how much we shall pay, just hand over in money to the railway company for the year 1918, how do we ascertain it? We go back and find out their average net income for the three years prior to June 30, 1917.

Mr. WALTER. That is right.

Senator CUMMINGS. With a deduction of whatever expenses—and taxes are a part of them—that were incident to the operation of the property.

Mr. WALTER. Yes; but in allowing them to compute the net railway income in determining how much they have really had, Senator, you allow them under this act to deduct the excess war taxes, so that the company has only had \$500,000; as net operating income there has been paid war taxes by the company amounting to \$600,000 and the company has really had \$100,000 more than the Government guaranteed to give it. Now, under this bill as drawn the company can say, "We want our guarantee, which includes \$500,000 more than the railway operating income as computed by the proper rule."

Senator CUMMINS. But I am trying to get it into my head, by assuming that they have had no money for 1918 at all. We have taken the money for 1918, and it is simply a question of how much

we shall pay to this company for the use of that property during 1918.

Mr. WALTER. But that is not what you do, Senator. The railroads collect the money, they expend the money, and they come and present you a balance sheet, and they say, "Now, on this balance sheet we are still out money, and you owe it to us under this law." And it is true that under the bill as drawn every particle of the war taxes under No. 3 would be paid by the carrier and you would reimburse them for it. Now that law ought to be changed to meet your view.

Senator CUMMINS. So the whole difficulty arises in allowing the company theoretically to keep the money, in other words, treating it as company money instead of as Government money. If it were treated as Government money then the difficulty you have in mind would not arise at all.

Mr. WALTER. It would not arise if you make it plain that that income that you guarantee them of \$1,000,000 is going to be subject to this tax just the same as my \$1,000,000 or anybody's else.

Senator CUMMINS. That would follow as a matter of law.

Mr. WALTER. It does not follow here because you say in determining the net railway income they get back these taxes.

Senator CUMMINS. I see your point now. I was not clear about it before. It would be a good deal plainer to me if it was so phrased that all the money that arises from the operation is paid over to the Government.

Senator WATSON. Is not that the theory upon which this bill is drawn, that carrier money is the Government's money?

Senator CUMMINS. It ought to be, and I think it is.

Senator WATSON. I understood the commissioner to testify the other day when I asked him that question directly, that the theory upon which this bill is drawn is that the carrier money is Government money.

Commissioner ANDERSON. I did so testify.

Senator CUMMINS. I think that is so, but this language has baffled me, because there is introduced into it the accounting.

Commissioner ANDERSON. Yes.

Senator CUMMINS. The accounting on the part of the railroads was only the excess over and above the standard return. It would be a great deal clearer to me if that were not in here at all.

Mr. WALTER. Let me make this suggestion. That presents a thought that I had not considered, but do you want to do that? Do you want to make this money Government money? Should not you permit these railroads to go ahead and operate—paying their bills and operating their roads just as they have done, from the financial standpoint—of course leaving out of consideration any maladministration—and relieve the Government from the necessity of the moneys being put into its Treasury and then taken out; just simply say you have to pay your war taxes as anyone else—not let one hand wash the other, as this bill would permit? I think the least you do with the railway funds the better off you will be. I would not do that. If you are going to guarantee them the earnings I would say make the carrier live up to certain rules in determining the earnings, because a bookkeeper can take figures and make them prove anything.

Senator CUMMINS. I am not suggesting that the present organization ought not to continue in its management and operation, but, as I

look at it from the legal standpoint, every railroad man, from the president down, is from the 31st of December a Government employee, and he is working for the Government, and not for particular railroad companies, in so far as operation is concerned.

Senator UNDERWOOD. Is not the status in reference to taxes this: I said awhile ago that the tax year started on the 1st day of January. It does ordinarily under the law, except there is an exception in the law that allows certain companies to start their tax year on the fiscal year. That might change the situation as to some of the companies, but the status in reference to the taxation, is that, although from the time of the taking over of the railroad, so far as operation is concerned, their officers may be Government employees, yet the corporation exists as a corporation. The officers of that corporation still owe a duty to the stockholders in the way of management of the corporation. Heretofore the revenues of a corporation have been derived from their rates on freight and passengers. If this bill goes through the revenue of the corporation will be derived from the United States Government, by agreement. It makes no difference under the law whether that net income is derived from the United States Government and paid by it, or paid by the roads; if net income is there the corporation will have to pay its income and excess profits tax, on the net income, unless Congress itself affirmatively changes the law.

Mr. WALTER. Yes; and I submit that your amendment here, by saying how it shall be accounted, permits the carriers to pay these taxes and deduct them, and say we are out just that much more than we would have been; you guarantee so much money and you must make up the amount of our excess war taxes.

Senator UNDERWOOD. Your argument goes to the fact that under the bill the Government is changing the law?

Mr. WALTER. Yes; I do not want you to change the status of the corporation. The taxes still have to be paid, but it does reduce their net income by the amount of the excess war taxes; to the extent that railway operating income is less than the standard return you make it up to them.

Senator KELLOGG. That is not the construction that Commissioner Anderson places upon it.

Mr. WALTER. Yes; and he called attention to the item in the Traffic World, which he said misquoted him, and when I read this statute I had exactly the same view of the statute that the Traffic World had, and I was of the same opinion. Nobody wants to do that, and Mr. Anderson agreed with me that they do not want to do that.

Commissioner ANDERSON. I thought not that the Traffic World misconstrued the act, but they misstated what I said. I do not think there is the slightest difference between the printed draft of the bill and the typewritten draft which I have here this morning. I handed it to Senator Cummins a moment ago. It provides in explicit language that during the period of Federal Control any Federal taxes in excess of taxes imposed by laws then in force upon any such carrier during the year ended June 30, 1917, shall be charged against or deducted from such standard return; and that is no different from the language in the printed bill, which says "that such excess taxes shall not be charged to operating expenses." But as

somebody else though there was a difference, and I wanted to make it entirely clear that the standard return is to pay the excess war taxes, I put it in positive instead of negative form, to remove it from the possible realm of debate.

Senator UNDERWOOD. Commissioner Anderson, why should you change the language of the existing law with reference to levying these taxes and put it on a standard return, which may differentiate it and make it different from what is paid under existing law. If it is paid now under the standard return it is not necessary to change it, and if it is paid on a different basis than the standard return we only bring about an exception to the rule.

Commissioner ANDERSON. I do not believe I understand that.

Senator UNDERWOOD. I do not see that the passage of this bill, if you do not say anything about taxes, changes the status of these corporations as corporations. They are not operating corporations, but they are corporations for the purpose of receiving their net income and paying their stockholders dividends and their bondholders interest, and it does not change the status of the corporation relative to its tax status, because the tax is paid through the agency of the United States Government instead of collecting it from the roads. If you just leave it alone as it is, without mentioning the law at all, it would seem all right.

Commissioner ANDERSON. You get into considerable trouble. The theory upon which it goes is this: It was the general consensus of opinion that the owners of the securities of these carriers ought to have just compensation, or at any rate the President ought to have authority to trade with them upon the theory that just compensation would be the average of the net earnings for the past three years—which was pretty generous. It was also the consensus of view that if they had gone on running their own properties they would have been hit like all the rest of us for war taxes, and that those net earnings thus averaged should bear the war taxes. To work that out sounds simple, but to work that into comparatively short language in one section of the bill, stated with reference to the accounting systems of the carriers and the Interstate Commerce Commission, is no simple job. I think we have got it.

Senator UNDERWOOD. Was it the purpose of the drafters of this bill to exempt the railroads from paying their war taxes in any way?

Commissioner ANDERSON. Yes, and no. The war taxes will go against the standard return, and thus come out of the security holders who are pro hac vice the railroads during the period of Federal control. But as you put it a moment ago, sir, the income from the railroads during Federal control is going to be the just compensation agreed upon or ascertained.

Senator UNDERWOOD. Certainly.

Commissioner ANDERSON. So that they will have no income from passengers or shippers.

Senator UNDERWOOD. Can they not have that income subject to taxation, if you leave it alone?

Commissioner ANDERSON. Yes; it is going to be subject to taxation, but ordinarily the taxes of the carrier are charged against what I might call without being definite the gross revenue as part of the operating expenses. The theory of the bill that such tax ac-

cruals as were not war tax accruals, that is, as were in existence prior to June 30 last, shall be continued to be charged as part of the operating expenses. But last October you levied some war taxes. Those ought to fall on the holders of the securities, and they are during the period of control, by virtue of receiving this just compensation, the railroads, as we have been accustomed to use the term "railroads." That is what we have been trying to work out.

Senator CUMMINS. May I ask this about it? Is this what you mean by the draft, both as printed and as submitted this morning, that the railroad goes along under its present organization; its standard return or income, guaranteed income, is determined and it is under the duty at the end of the year of making an account with the Government; and if its earnings are less than the standard return, then the Government pays; if they are more than the standard return the company pays, and that in making the account at the end of the year with the Government the war taxes that were in excess of those levied prior to June 30 shall not be charged to the cost of operation?

Commissioner ANDERSON. That is just it.

Senator CUMMINS. That is just what you mean?

Commissioner ANDERSON. That is what we mean.

Senator CUMMINS. I think it could be expressed so that the common ordinary mind would understand it better if it were put in some such way; that is, in determining whether the company should pay to the Government or the Government should pay to the company in the years to come, that the future taxes shall not be charged against the cost of operation.

Commissioner ANDERSON. Suppose you look, Senator, at the bottom of that typewritten page which I put before you, where I have reversed it and stated that they shall be charged to the standard return. I still insist that the printed bill means exactly the same, but in the interest of clarity, because somebody raised the same question Mr. Walter did, I reversed it and put it in that fashion.

Senator CUMMINS. I think to me the whole confusion arises out of the use of the words "standard return" in the proviso. I do not think that it ought to be said that the excess war taxes are to be charged against standard return. You are trying simply to make a provision as to whether the company has an excess to pay over to the Government, or whether it has a deficiency that must be made up by the Government; I think that the use of the words "standard return" in that connection confuses rather than clears up the situation.

Commissioner ANDERSON. I do not believe you would stand to that proposition if you sit down and attempt to work this bill out *ad seriatim*, having in mind the accounting system of the carriers, the nomenclature of that system and the nomenclature of the Interstate Commerce Commission system. I have tested every draft that I have made by sending for the head of the accounting department and saying: "Take it and read it and tell me what results you get," and when he produces his results and tells me how they figured on them, then I have a primary guess that I have hit it right. That is the primary test, Senator, is it not?

Senator CUMMINS. If the money were actually paid into the Treasury day after day, all the money made in the operation of these roads, and then at the end of the year the Government should take from

the Treasury and pay the standard return, you would not use any such language as this.

Commissioner ANDERSON. Probably not, but you could not make that machine work, and it seemed to us that the best way to make the machine work, Senator, was to provide that the Interstate Commerce Commission should make the certificate. Of course, those are made by our accountants. I draw language which undertakes to express the principle we are working at; I send it to the accountant of the Interstate Commerce Commission, and probably if he is in doubt he communicates with the railway representatives and asks "What result should you get on that?" Then they produce before me an illustrative result. I venture to think that is a better test of that problem than you could get from forty of us lawyers sitting down and working over it—and a safer test.

Senator CUMMINS. I always test those matters by the effect they produce on my own mind. I think it is rather a common and ordinary one, and anything that is plain to me I assume is plain to anybody else, and anything that is mysterious to me I assume is mysterious to anybody else. I suppose that is wrong.

Mr. WALTER. Just let me make a final observation on that point. I agree with the commissioner as to how to find out whether it means one thing or means another, and I feel guilty of no impropriety in saying that I went to the chief statistician of the commission and asked him to take that bill and work out the figures. He said what I had done was right, and it arises from this fact; that "net railway operating income" in the books of the commission has a definite fixed meaning, and it always has had. Subtract the taxes you pay, and unless you have it to that effect they will take the taxes out and say you owe us the difference. You do not want that, neither do I. If you simply say net railway operating income, showing any deduction for war taxes accrued, it will be all right.

There is one other thing that I should say, that the suggestion that 1917 be taken arises from this fact: The books and accounts of the carriers end with June 30, with the exception of one year. The commission had the figures recast for 1916, so you have now 1916 as a calendar year and 1917 as a calendar year; you would have to recast but one year, that of 1915; that would take care of the situation. I think that is all I have to offer.

The CHAIRMAN. You are through now?

Mr. WALTER. Yes, Senator.

The CHAIRMAN. We would like to hear from Mr. Cowan.

Mr. S. H. COWAN, of Fort Worth, Tex. Mr. Chairman, I had expected that Senator Bristow was going on the stand, and I expected to get hold of the report of the hearings. I asked the clerk about it yesterday evening, and he said he would have them to-morrow. There were some arguments which I desired to address myself to, some features of the Interstate Commerce act, in its application here, and some features of the constitutional rights, which I am not prepared to do. I did not expect to appear to-day on account of the fact that I understood Mr. Bristow was going to take the time.

The CHAIRMAN. If Mr. Bristow is prepared, he can now take the stand.

**STATEMENT OF HON. JOSEPH L. BRISTOW, CHAIRMAN OF THE
KANSAS PUBLIC UTILITIES COMMISSION.**

Mr. BRISTOW. Mr. Chairman, when I got here the other morning I inquired of Senator Cummins as to what was the desire of the committee, and he explained to me what it was. I am having some data prepared; I do not have it with me. I hope to have it here by noon. There is a question or two that I might ask in regard to the bill, and have it explained to me so that I may understand it a little better. I might ask them now if it would be agreeable to you gentlemen, and then I will endeavor to make any suggestions that I can immediately after the adjournment at noon.

Senator CUMMINS. We have only 15 minutes to go on now.

The CHAIRMAN. If you desire to ask any preliminary questions you can do so now.

Mr. BRISTOW. I desire to say that it is with some reluctance that I undertake to make suggestions, because the bill is one, to my mind, of such stupendous importance and so radical in its provisions—as I understand it, such a sweeping policy in regard to the transportation business of the United States, which is so vital to our industrial and commercial welfare—that I feel unable to satisfy my own mind as to what ought or ought not to be done. I would like to inquire as to the interpretation put upon the word “rate” in line 9 of the first page. It reads:

* * * is hereby authorized to agree with and to guarantee to any such carrier that during the period of such Federal control it shall receive as its just compensation an income at an annual rate equivalent as nearly as may be to its average net railway operating income for the three years ending June 30, 1917.

What does that word “rate” apply to, and what does it mean? Is it a rate per cent on the value of the property, on the stock of the companies, or what is it?

The CHAIRMAN. I think according to the tables submitted here it is the rate on the sworn statement of the investment of the company. I think those were the tables that we had submitted to the committee.

Mr. BRISTOW. Is that a rate per cent on what is termed the book value of the property as submitted by the companies?

Senator CUMMINS. I have not so understood it at all.

Commissioner ANDERSON. I have cut it out of the redraft. I put it in the original because somebody raised the question as to whether we had not gone around the act so as to make the return payable only annually, and suggested that the proper way was to have it paid at such convenient periods or accrue at such convenient periods as between the Government and the carrier as to take care of the ordinary interest and dividend disbursements, and there ought to be no implication that it was only possibly annually. But somebody else raised an objection something like that of Senator Bristow's, and I have it in my last attempt at section 1, “it shall receive as its just compensation a return equivalent, as nearly as may be, to its average annual railway operating expenses.”

The CHAIRMAN. But the question that Senator Bristow asked, Mr. Anderson, was, what do you base that rate upon, the book value, the stock value, or what?

Commissioner ANDERSON. It has no relation to either. “At an annual rate” meant that the return was to be figured at a sum which

would go through the year, but might be paid at any time during the year that the convenience of the Government and the carrier should dictate. That is all the "annual rate" meant.

Senator CUMMINS. That is, your meaning would be as if it were to read "as a just compensation an income at an annual sum"?

Senator TOWNSEND. Or "amount."

Senator CUMMINS. Or "amount."

Commissioner ANDERSON. You get into that trouble. They wanted sums based on the year, but payable at such time as would suit the convenience of the carriers and the Government.

Senator UNDERWOOD. In other words, if the war was over and the railroads were returned before the year was up, you would not want to pay them a whole year's rental?

Commissioner ANDERSON. That is it; nothing but split a year up.

Senator POMERENE. Is it not made clearer by just striking out the word "rate"?

Commissioner ANDERSON. I have stricken it out.

Senator KELLOGG. In the redraft he has submitted it is stricken out; yes.

Mr. BRISTOW. I have not seen the redraft, and the term "rate" confused me. If it was a rate per cent—upon what?

Senator KELLOGG. There has never been any claim that it was a rate on capital or on investment.

Senator CUMMINS. It is simply finding out how much each railroad should get annually.

Mr. THOM. I think we shall have to object, Mr. Chairman, to the striking out of those words. We do not want a compensation for the whole period of Federal control equivalent to what we get annually. We want each year the payment, not for the whole period, a period which is reckoned out by finding what it was annually. We want each year. We also want to ask at the proper time that there shall be designated the periods of adjustment in this matter to meet our various needs. We shall ask at this time that these adjustments shall be made quarterly, or at such shorter period as the President may determine, and when we get those adjustments we will have to refer to the return to find out how much of the annual return is payable at any one of these adjustments.

Senator KELLOGG. But, Mr. Thom, there is no claim that you were to be paid for three years' use of your property on the one year's return?

Mr. THOM. No; there is no claim of that, but the way this is drawn now it would seem to have that result.

Senator KELLOGG. I have not examined it.

Mr. THOM. We know that is not the claim.

Senator KELLOGG. The suggestion was that you should have as your just compensation annually a sum equal to the average net income.

Mr. THOM. I know that, but I say striking it out now destroys that meaning, and therefore we would have to bring it back in some way so as to make certain that the compensation which we are to be paid is an annual one during the time.

The CHAIRMAN. Yes.

MR. THOM. Not for the whole period; and we shall also ask at the proper time that this shall not be an annual settlement or adjustment, because we have a great many payments to make.

Senator CUMMINS. Yes, but you have the money in your hands.

MR. THOM. Can we use Government money? There are a great many questions. I understand if you use that money before, no matter how manifest it is, that it is ours. No matter how manifest it is, if it is ours, although I am told it may manifestly be ours, if we use it at one of these adjustments it will be embezzlement.

Senator CUMMINS. I think it has not been called by any member of the committee, or said that it meant, the "guarantee" of any particular per cent of investment account, or stock, or value of the property, or anything of that kind.

MR. THOM. That has not entered into anybody's mind. Commissioner Anderson has correctly expressed, as I understand it, the views in the minds of some different people, which is, first, we contend that the bill ought not to be so drawn that your payment is one payment for the period of Government control, but that it is an annual compensation. Second, that we do not want these adjustments merely at the end of a year, but we want them at periods during the year, and therefore you will have to take the annual amount and make a rate of it.

Senator POMERENE. Mr. Bristow's question addressed itself solely to the rule for compensation, not as to the time of payment.

MR. BRISTOW. No.

MR. THOM. But it has come to be suggested here that we strike out something, and I want to call the attention of the committee to the danger they are running into, and which I am sure the Government does not desire, in striking out that and leaving the one that is now suggested. I do not want to take up the time of the committee, because when you get the language of the bill before you I assume I shall have a right to look at the language used and make suggestions about it.

Senator POMERENE. There won't be a bit of difficulty about it.

MR. BRISTOW. You gentlemen will understand that I read this bill first in the newspapers as they were printed out in the West, and this rate of return, "an annual rate equivalent as nearly as may be" to a sum—well, I wondered what that rate meant: If it is a million dollars, and that is 5 per cent on the book value of the property, is that the rate that they are entitled to; or if it is 7 per cent on the capital stock, or what does it relate to? That is the reason I made the inquiry. I could not tell. I understand, as Commissioner Anderson has suggested, that it means a sum of money.

Senator KELLOGG. That is what it means exactly.

MR. BRISTOW. That is to be paid annually, with some other provisions to which I will refer later.

Commissioner ANDERSON. Not paid annually, but account as an annual sum.

MR. BRISTOW. As to the periods of distribution, that is a matter of no special interest to anybody, I suppose, except to the carriers that receive it. I had the bill at my room last night that I marked and did not bring with me this morning, because I did not know that I was to appear; so you will pardon me if I take a little time in finding some of the questions. Mr. Walter's suggested here this morning

one of the inquiries I wanted to make as to lines 18, 19, and 20, on page 2, which read:

During the period of such Federal control adequate depreciation and maintenance of the properties of the carriers shall be included as a part of the operating expenses * * *.

There is great controversy as to depreciation between the Interstate Commerce Commission and the carriers in the valuation that is now proceeding under the law of Congress.

Senator POMERENE. You mean as to the rule they adopt, Mr. Bristow?

Mr. BRISTOW. The carriers are insisting in the valuation proceedings that there is no depreciation in the roadbed of a railroad as to its value, that a roadbed properly maintained, eliminating the equipment, just taking the road itself other than the equipment—there is no depreciation if it is properly maintained, that all depreciation is or should be styled "deferred maintenance," and that as a matter of fact a road in operation, properly maintained, is worth more than it would be new, because the track has been adjusted and seasoned.

That, of course, is controverted by the Interstate Commerce Commission, the Division of Valuation, and it is finding the value of these properties, deducting depreciation and fixing what is termed a per cent condition. Being slightly familiar with that controversy, having listened to the arguments of both sides quite a good deal during the last two and a half years, I wonder what is meant or what interpretation is to be put upon the term "adequate depreciation."

Senator KELLOGG. Senator Bristow, let me see if I understand you. Is not the question when you are valuing the present physical value of a property entirely a different question, of keeping a fund on hand to make good actual depreciation? What the commission is doing is finding the present value of a railroad property, and suppose that the finding is to be made as of to-day. The dispute there is whether the property should be depreciated, that is, as to its present value, should be depreciated enough to make up for what it has actually depreciated. In other words, whether they should value money on hand to make good depreciation as capital. Is not that the question?

Mr. BRISTOW. Yes.

Senator KELLOGG. In this question that does not play any part at all. There is no doubt that a car does depreciate.

Mr. BRISTOW. I was speaking of the roadbed. There is no great dispute as to the depreciation of equipment.

Senator KELLOGG. There is no doubt that the railroad track depreciates. The steel rails put in to-day begin to wear out. They may not be displaced for 10 years, but during that 10 years each year they are wearing out, and it is proper that a fund should be charged each year, enough to replace them, is it not?

Mr. BRISTOW. I think so.

Senator KELLOGG. That is what is meant here by depreciation, is it not?

Mr. BRISTOW. Now, Senator Kellogg, will you kindly define the difference between a depreciation fund and a maintenance fund, as

you will interpret it here? The Interstate Commerce Commission has a definition as between the two provided for.

Senator KELLOGG. Of course, I am not speaking for the committee.

Mr. BRISTOW. No.

Senator KELLOGG. If you maintain a railroad to a present standard, and you set aside a certain fund each year for depreciation of rails, we will say, I do not care whether you call it a maintenance fund or a depreciation fund, it is the same thing; it has to make good that rail when it is worn out.

Mr. BRISTOW. Who knows what the physical conditions of the railroads were when the Government took them over? Who can tell at the end of one year or two years what expenditure for maintenance and depreciation should have been made?

Senator KELLOGG. Each railroad is not the same; the railroads, of course, have not got an absolutely uniform system.

Mr. BRISTOW. I am speaking of the obligation which the Government is assuming here.

Senator KELLOGG. The Government is assuming an obligation here for the future for railroad depreciation. The railroads may differ as to their accuracy of what is necessary for depreciation, and the Government has got to determine what is fair and right. But there is a depreciation. During 1918 rails will be worn some, and some fund must be set aside to make good that, or else the property is depreciating, is it not?

Mr. BRISTOW. Certainly.

Senator KELLOGG. That is proper operating expense?

Mr. BRISTOW. Certainly.

Senator KELLOGG. No Government official can set down dogmatically such a percentage on every railroad in the United States. You take the ore road, where the traffic is enormously heavy; I have known a 90-pound rail to wear out in three years on a curve.

Mr. BRISTOW. The point I am making, Senator Kellogg, is how the Government agents or representatives are to know what is an adequate amount to set aside for the depreciation of these railroads which it assumed control of on the 28th day of December, or whatever date it was.

The CHAIRMAN. Have you not any general average of depreciation for a period of years on any of the roads that might approximate what would be the proper amount to set aside?

Mr. BRISTOW. If there is such a thing, should it not be expressed in that language, instead of the term "adequate," which is flexible and can mean anything, according to the judgment of the man passing on it?

Senator KELLOGG. Mr. Bristow, if we sat here and determined as to all branches of the service—rails, ties, cars, and everything in the various conditions of operation—as to what is the standard rule for depreciation, we would not finish it in 20 years. You have got to determine that as near as you can from the books of the company and from the experience of the operators.

Senator CUMMINS. That part of the bill is, I think, weak and imperfect in this regard, and I called it to the attention of Commissioner Anderson while he was on the stand. I have no objection to allowing a proper item for depreciation. I think it is sound.

Senator POMERENE. And maintenance.

Senator CUMMINS. But assuming that is done, that depreciation charge ought to be conclusive evidence when we turn back these properties to the companies that they are in as good condition as when we got them.

Senator KELLOGG. That is not the question we were talking about.

Senator CUMMINS. That is the question.

Mr. BRISTOW. That is the very question I intended to bring up. When the United States Government takes possession of these railroads it takes possession of them in a certain physical condition; it obligates itself to adequately maintain them during the time of its possession. The time will come when it will return them to the owners, presumably. Now, how many claims can lie against the Government for inadequate maintenance of those properties, and what evidence can be submitted to the Court of Claims or any other tribunal to prove that they were not adequately maintained?

Senator KELLOGG. I was not discussing that at all.

Mr. BRISTOW. That was the very question I had in mind.

Senator CUMMINS. It is certainly connected with this depreciation charge.

Mr. BRISTOW. I was not controverting the question that they have a right to a depreciation fund and to proper maintenance, but it seems to me that without any knowledge as to the physical condition of these railroads at the date they are taken over, without any knowledge of the physical conditions at the date they are turned back—because it will be impossible to have it—for the Government to agree to adequately maintain during this period of operation leaves room for the widest possible disagreement as to what adequate maintenance is.

The CHAIRMAN. The hour of 12 o'clock having arrived, which is the hour for recess, Mr. Bristow will take the stand immediately at 2 o'clock.

(Thereupon, at 12 o'clock noon, a recess was taken until 2 o'clock p. m. of the same day.)

AFTER RECESS.

The committee reassembled at the expiration of the recess, Senator Smith of South Carolina (chairman) presiding.

The CHAIRMAN. The committee will come to order. Senator Bristow, you may proceed.

STATEMENT OF JOSEPH L. BRISTOW, SALINA, KANS.—Resumed.

Mr. BRISTOW. I will say, Mr. Chairman, when I arrived here Wednesday morning I was advised by Senator Cummins as to about the line of inquiry that would be made and I undertook to get ready at that time data that I thought would be of use to the committee and had a young man preparing it. It is not all completed yet, and some of it was turned over to me in the shape of tabular statements during the noon hour that I have not had an opportunity to look over. I would rather not put in anything until I have at least had an opportunity to examine it, and I will ask the indulgence of the committee to submit that at a little later period this afternoon, if I may.

The CHAIRMAN. Without objection, that may be inserted.

Mr. BRISTOW. We were discussing that part of the bill which relates to depreciation and maintenance; that is, a permission, or a guaranty, rather, that adequate depreciation and maintenance of the property should be made by the Government, or the Government would be responsible for during the period of its control.

Commissioner Anderson handed me a statement at the close of the hearing which he said had somewhat changed the language of the bill, which I will read. The part relating to depreciation is as follows:

And provided, further, That for the purposes of computing the standard return of each carrier during the period of Federal control, there shall be charged upon the books of such carrier to railway operating expenses, or to reserve fund, to provide for depreciation, maintenance, and renewals, amounts determined as nearly as may be by the same methods and the same principles used by such carriers during the three years ending June 30, 1917, but the President may authorize different charges if the public interest so requires.

I think this language that I read is better than the language in the bill, because it is more definite, but when it is qualified by permitting the President to suspend it, authorizing different charges if the public interest so requires, it simply takes the adjudication out of the hands of the Court of Claims, apparently, and the officers of the Interstate Commerce Commission, and transfers it to the President, who must act through some agency, which might not be as well equipped to perform the duties as the original boards of appeal, as you might call them.

The President can not do this himself. He must delegate it to somebody else, and it seems to me that it would be better to leave the adjudication of those controversies to some regularly constituted tribunal organized for the purpose of adjudicating such differences.

Eliminating the words "but the President may authorize different charges if the public interest so requires," I think the amendment would be preferable because it is much more definite.

My suggestion as to this provision of the bill is that it opens the widest field for litigation.

What is adequate depreciation and maintenance is a question in controversy in nearly every railroad case where the value of the use of the property is involved. There is no standard of fixing it. You will probably not find any engineers that agree after personally examining property as to what depreciation ought to be allowed or ought not to be, or as to what the state of maintenance is. So, I think the provision is a dangerous one if left to uncertainty. I do not know how you can avoid the danger. You can not take from the owners of this property the right to be reimbursed for losses incurred as a result of the Government seizing the property. They can not be deprived of their legal and constitutional rights for proper remuneration for the use of that property, or for damage done to it.

When you take a property and you have no evidence as to what its condition is when you turn it back, with no evidence as to its condition, and depend upon evidence that may be submitted to a tribunal as to what damage has been done with such uncertainty to begin with, you open the door, in my judgment, for cases before the Court of Claims that will last long after we are all gone, and the amount of damages which ultimately may be assessed against the Government of the United States can not be estimated.

I am talking to gentlemen now who have served on the Committee on Claims in the Senate, and if you will think a moment as to the nature of the claims that are pending before that committee now, and the imperfect way in which they are adjudicated year after year, and appropriations made to meet them, you will realize that this simply opens up another field for unlimited controversy.

Senator CUMMINS. Is it possible to escape those consequences? We take the roads, and we are under an implied, if not an express obligation, to return them to the carriers when the period of Federal control ends in as good condition as when we took them. That is inseparable from our obligation. How can we get rid of trying out that question? I agree with you that it will take 50 years, probably, to end the controversies that will arise on that matter, but how can we possibly escape it?

Mr. BRISTOW. I do not suppose you can. While I regret to disagree with a good many gentlemen in whose opinions I have the highest confidence, and for whose judgment I have the greatest respect, my own opinion is that the method by which we are undertaking to obtain control of these roads is the worst that could have been devised and the most dangerous. Of course I may be mistaken in that. I am not saying now, and I do not want to be understood as saying, that the status of the transportation systems of the United States are not such that some radical action is necessary. I am not passing upon that question. Whether the Government ought to take the roads or not I am not discussing. I assume that it ought, because it has. Whether the reasons that led to it justified this action or not, I am not saying. I do not know. But if the Government found it necessary to take the roads, then I think the question as to how it takes them is one of vital concern to the people of the United States, and it seems to me, from the superficial and casual observations that I have been able to make, that this opens up more fields for controversy, that it throws more doubt into the property rights of the people who own these roads than any system that could have been suggested. That is my judgment.

Senator KELLOGG. You are passing from this maintenance question now, are you, Senator?

Mr. BRISTOW. Yes, sir.

Senator KELLOGG. Before you pass from that maintenance question I would like to ask you a question or two, after the chairman and others have concluded.

The CHAIRMAN. There is no question that I care to ask, I thought perhaps he might suggest if he had in mind any amendment that might obviate the dire results that might follow from leaving it too open and loose.

Mr. BRISTOW. I think it would be better to say, and this would not do exact justice, but it would give definiteness at least, that there should be a like amount expended for maintenance and depreciation during the period of control by the Government as had been expended on the average during the three years prior to taking possession by the Government. Then, there would be a specific and definite amount which the Government would guarantee that would be expended in maintenance, and we would know what we agreed to furnish.

As to whether that would settle the controversy or not I am not able to say. It would certainly give definiteness to the amount that we would voluntarily assume.

Senator CUMMINS. I wanted to direct your attention to the difficulty in my mind. We have to pay once, and we should pay once. If it is possible, however, we should frame this bill so we will not have to pay twice, first, in allowing the annual depreciation to be charged up against revenue, and afterwards having to pay again for failing to return the property in as good condition as when taken.

Mr. BRISTOW. If the Government guarantees that it will expend for maintenance and set aside for depreciation sums equal to those which have been used for this purpose by the carriers during the three years prior to taking possession by the Government, it would seem to me to be reasonably fair.

Senator ROBINSON. May I ask you a question or two right there?

Mr. BRISTOW. Certainly.

Senator ROBINSON. Take the case of a road, for instance, that has for the three years been in receivership, and during that time it had expended large sums for maintenance, and at the end of that time does not seem to require anything like the same as that which had been theretofore expended, and I think there are some larger systems in this country that have exactly that case, or approximately that case. What would you do in a case of that kind?

Mr. BRISTOW. The Rock Island is one of those cases. The Rock Island went into the hands of receivers some years ago, and during the receivership the receiver very much improved the physical condition of the property. The expenditures for maintenance were very much heavier than they had been during the years preceding the receivership. The same is true as to the Missouri Pacific, and the Government would be obligating itself to pay more than it should, but it would be very much better under those conditions than to leave it wide open.

Senator ROBINSON. May I ask your attention to another case into which class I understand a great many of the railroads would fall, as affects this subject. Take the case of a road that has been skinning its property, as has been expressed, I think, by Mr. Commissioner Anderson, and I think you will understand what I mean by that, that is, expending practically nothing for maintenance, running its property without putting anything into it, and declaring as dividends all its earnings, practically. How would this rule that you suggest apply to a case like that? You would not want to limit the Government in its maintenance allowance, or its depreciation allowance to a sum that is admittedly inadequate?

Mr. BRISTOW. All that was necessary to expend over and above the average amount which had been spent during these three years I would charge to betterments, charge it to the carrier, and not charge it to the public or the Government. I think that would be comparatively easy, Senator.

To illustrate, up to the year that the Missouri Pacific went into the hands of a receiver it had been doing that thing. It had starved the property until it had run down and was in an unserviceable condition. There had been practically no expenditure for maintenance, the maintenance had been deferred. If the Government ex-

pended the average amount, and then found that the property was in such condition that it was necessary to expend more, then I think that additional amount should be charged to the property because it is in the nature of a betterment and the owners that permitted the property to get into that condition ought to be held responsible for it, and not the Government of the United States. That would be my judgment.

The CHAIRMAN. That would still be under the principle of maintenance, because maintenance is spent for the purpose of maintaining.

Senator ROBINSON. The difficulty of that suggestion is quite as great, in my judgment, as the one you are trying to counteract, if not greater, because that would necessarily involve an authorization of law for some one to exercise discretion as to when maintenance became so large that it must be charged to betterment. Do you not see what I mean, or do you see what I mean?

Mr. BRISTOW. Yes; I understand your question.

Senator ROBINSON. How would you determine that question? Here is a road that spent a few thousand dollars last year for maintenance and so requires a considerably increased sum?

Mr. BRISTOW. Yes.

Senator ROBINSON. And you can only allow the average of the amount that was expended during the three years and that is inadequate?

Mr. BRISTOW. Yes.

Senator ROBINSON. To whom are you going to give the power to determine how much of that sum that is really maintenance is to be charged to betterments, and how are you going to determine it when you vest the authority? What rules are you going to fix?

I suggest that, Senator, to point out that your suggestion does not lead away from any difficulty, but rather leads up to others quite insurmountable in themselves.

Mr. BRISTOW. Senator, if the Missouri Pacific, we will say, was spending a million dollars a year for maintenance, just using those figures for illustration, for three years prior to the ownership, and that it was manifestly insufficient to keep the road up to the standard to which it should be kept, and the Government takes it, the Government, when it takes that property in the depleted condition that it is, assumes no obligation to make it any better than it was, because it took the property as it was, and it was worth what it was worth at the time it took it.

If it turns the property back, in theory, in as good condition as it was when obtained, why its obligations are fulfilled so far as the owners go. To my mind, the best rule that can be fixed would be, so far as the obligations of the Government are concerned, an amount equal to that which the company itself had expended. It seems to me that that is all the Government is obliged to do.

I can see that your point is a very important one, that if the Government, to use this property, finds it necessary to spend two million dollars a year instead on one million, the company will come in and say, "Well, the Government found it necessary to spend two million dollars, but it used the property more than we did when we had it and it ought to have spent that much more, and therefore

we are under no obligation to pay one million of these two million dollars."

Senator ROBINSON. If you will pardon me, right in that connection. Senator Bristow, I think you have the actual illustration rather reversed. Of course, it would make no difference as to the principle you had in mind. But in the case of the Missouri Pacific, if I am correctly informed, prior to the receivership the operations were with design to avoid receivership, and the maintenance was neglected and the property did depreciate. When the receivership was created, the administration undertook to build up the property, and that was accomplished rapidly, and with rather remarkable skill. So that prior to the end of the receivership the property was in fact in better condition than it had ever been, and, indeed, was one of the best properties in operation in the United States, so that when the Government took possession of this railroad there was little necessity for large sums to take care of maintenance because the road was in the very best condition conceivable, or approximately so. During the three years, however, that are taken as the standard here, the receiver had expended enormous sums for maintenance. Now, he does not need it now. The owners would not want an allowance in that enormous sum for depreciation or for maintenance. They would want it for dividends or for whatever else they could get it, so that you are not confronted in the case of the Missouri Pacific illustration with the Government having to pay large sums for depreciation, of necessity. You are confronted with the other case, but the owners of the property, as well as the public, would not want to be charged with sums that were not needed for maintenance under any fair administration, and there are a large number of roads that fall into one of the two classes that we have been speaking of, some of them in varying degrees, so that I do not think the rule you have fixed, if you will pardon me for suggesting it, is practicable at all, although I may be wrong about it. I do not think it helps us. The exceptions would be so numerous that it would be necessary to create some tribunal to determine just where the maintenance allowance should end and the charge to betterments should begin, and that in itself would present a series of complications difficult of determination.

Mr. BRISTOW. You think, Senator, I infer, that the provision does open up a field of controversy that is almost limitless?

Senator ROBINSON. It is unquestionable that it presents difficulties. The whole subject is undoubtedly full of many difficulties. I do not think it will be possible for any mind, or minds, to anticipate the difficulties that will arise in this connection, but the same is true of every other big problem that arises. What we are interested in is to find the best solution of it, of course, that can be presented.

Senator CUMMINS. Senator Bristow, while you are reflecting upon this subject, and as you will probably before the committee again, I want to indicate to you the plan, and the only plan, which in my judgment will be just. Again I say, as I said this morning, the Government must be assumed to be in operation of these properties, and all the revenues that are taken in belong to the Government, and it is for it to dispose of that money in any way that it believes the public interest requires, inasmuch as we have already guaranteed to the companies an income which can not be changed or modified.

Our obligation is to return the property to the owners in as good condition as when taken. We go on and operate them, spending just as much money or as little money as we think is right to maintain them. If there has been deferred maintenance, we supply it, and bring the roads into the condition that is necessary in order to do the business.

When we turn them back, if by reason of our expenditures of money the road is in better condition than it was when we took it, it is the obligation of the carrier to pay the Government that sum of money. If, when we turn it back, the road is not in as good condition as when taken, it is our obligation to pay the carrier the sum that will represent that, and with that plan we need not have anything to do with depreciation, or a sum set aside for depreciation. It is our property for the time being to be bettered as we think it ought to be bettered. That does not, of course, close the door to these difficulties about ascertaining whether the roads are in as good condition when turned back as when taken, but it eliminates all this problem with regard to what shall be charged for depreciation.

Mr. BRISTOW. Senator, the difficulty I see in the plan you suggest is that there is no evidence as to what the condition of the road is now.

Senator CUMMINS. Certainly not.

Mr. BRISTOW. When the Government took them, we have no evidence whatever.

Senator CUMMINS. We can not supply that.

The CHAIRMAN. Just let me suggest: Suppose there was approximate evidence of the condition. Under the plan suggested by Senator Cummins, when the Government turned the road back, suppose it was evident that it was in better condition than when received. Who would determine how much better, and if it was less, who would determine how much less, and how much nearer would you get to a settlement in that event than if it was wide open as it is now?

Senator POINDEXTER. Suppose you agree on a tribunal, what rule would they be guided by? We are treating only with the physical property, of course.

Senator UNDERWOOD. Let me make a suggestion to the witness. I do not know whether this is a wise proposal, but I would like to have his view on it. Suppose we provided in the bill that if settlement is made with the President it shall embrace terms and conditions in lieu of all future damages, and have the President in each case make his final settlement for taking over the railroads, signed, sealed, and delivered at that time. Of course, if they go to the Court of Claims for settlement, the Court of Claims will render one verdict and that will foreclose them for the future. If they do not make settlement with the President, they get judgment in the Court of Claims for their rental, or their value. That is final unless they take an appeal. There will be no opening of the case then. What we are attempting to do is to avoid the Court of Claims. If the bill provides that the President should reach a final agreement with each particular road as to the amount of damages, and conditions growing out of it, would not that protect the future?

Mr. BRISTOW. It would if the roads agreed to it, of course.

Senator UNDERWOOD. If they do not agree to it, then they go to the Court of Claims where there is a final conclusion.

Mr. BRISTOW. Ultimately, yes. My experience has been that the officers of the Government and the railroads rarely come to a conclusion as to the value of service or of property, and there is such a wide difference of opinion between the officers of the Government and the representatives of the carriers that I think you will find as to maintenance and depreciation that there will be a very great many disputes of a very grave nature, because the difference of opinion is so varied and the interests are so vast.

Senator UNDERWOOD. Bearing in mind what you said awhile ago about the way a law suit will grow in volume and amount as the years go by, it seems to me it would be very much cheaper for the United States Government if the President were to make a very liberal contract agreement now in final settlement rather than to wait to have the question adjudicated in years to come.

Mr. BRISTOW. I think that is true.

The CHAIRMAN. I started to suggest, Senator Bristow, that we have got an approximate standard for remuneration set out in section 1. Senator Underwood suggests why would it not be safe to have some standard of settlement, or authorize some one to settle upon what would be an amount satisfactory to the several railroads involved, each one in particular, as to what they would accept in settlement, so that when we turned these roads back the question would not arise in the future.

Senator ROBINSON. How can you settle in advance the amount of damages that will accrue when you do not know what the damages will be? Take it as a practical proposition. The Government takes the Missouri Pacific Railroad, and the railroad representatives are called upon to determine with the President how much damages they would take for the depreciation of their property. It is a physical and intellectual impossibility to determine in advance because they can not anticipate how long the Government is going to use the property or how well the Government is going to use it. I do not think that is a practical suggestion at all.

Senator UNDERWOOD. May I ask this question? How is the Court of Claims going to determine that question unless they wait until after it is turned back?

Mr. BRISTOW. They can not do it, nor can any other court.

Senator CUMMINS. It is bound to be deferred.

Mr. BRISTOW. Certainly.

Senator ROBINSON. You can not prosecute a suit upon prospective damages. You have to allege that the damages have arisen.

Senator CUMMINS. I would like to ask the Senator from Alabama suppose the Government in its operation should disable half the engines upon the Pennsylvania system so that they could not be operated at all, and turn back the property to the company in that condition?

Senator KELLOGG. The trouble about that is we are confounding two things.

Senator CUMMINS. I know we are.

Senator KELLOGG. What is to be determined is the value of the use of the property, not the maintenance, because that is something that occurs in the future. The Government is legally obliged to pay for the use of the property a fair rental value and to maintain

it. They are entirely separate, and you can not agree in advance what that maintenance can be, except some general principle. I do not see how you can, at least.

Commissioner ANDERSON. May I ask one question, Mr. Chairman?
The CHAIRMAN. Yes.

Commissioner ANDERSON. It has been suggested to me partly by what the witness said and partly by some of the questions of the Senators, that the method of dealing with this depreciation problem in the draft bill before me is an insoluble problem, but if we can better do it I should be as much pleased as anyone.

Senator Bristow, you noticed in the redraft that I showed you at the lunch hour I had undertaken under that plan to project into the period of Federal control the methods of depreciation and maintenance used by the carriers during the three-year-standard period, because in this case the rental is based upon the same period and the same practices, and it seemed therefore clear that as the rental was based upon bookkeeping, one factor in which was maintenance and depreciation, that the rental would not be fair unless we carried the same methods as to depreciation and maintenance during the period of operation.

You made a suggestion a moment ago which I thought lead in this direction, and I wanted to get your judgment as to whether it was practicable.

That if it be found during the period of Federal control necessary to apply a different principle or method of maintenance in order to keep the property up from that which had been applied by the carriers when under private ownership, and thereby incurred in the case of any particular carrier excess expenditures, that you should charge it to betterments.

I wonder if a section like this would be practicable in connection with the treatment of depreciation, maintenance and renewals in the typewritten copy before you. Suppose you had something like this:

During the period of Federal control, the properties of the carriers shall be maintained in as good repair and with as complete equipment as when taken over by the President; but any expenditures thereby caused in excess of the amounts chargeable to railway operating expense for depreciation, maintenance and renewals as provided in section 1 shall be charged as additions or betterments, to be paid for by each carrier.

Senator CUMMINS. I think that is pretty good.

Mr. BRISTOW. I think that is good.

Commissioner ANDERSON. I did not know whether it was or not.

Mr. BRISTOW. I think that is pretty good. I think, if you will permit the suggestion, I would authorize the Interstate Commerce Commission to determine the controversy in the first instance as between the Government and the carriers.

Commissioner ANDERSON. Senator, let me say here that I was very much shocked the other day to find that the Interstate Commerce Commission is being attacked by the railroads as not an impartial tribunal. I have been there but three months, so I am not so tender, but I do not believe that would work.

Senator KELLOGG. At the present, the commission has nothing to do with it, has it?

Mr. BRISTOW. No. But the Interstate Commerce Commission has a system of accounting whereby it requires certain amounts to be charged to depreciation and certain amounts to maintenance, and it is the best constituted tribunal to deal with that subject there is in the United States. I think that will be admitted by all.

When I suggested that you substitute that instead of the President I did not mean to say that the President, if that was his business, would not do it as well or better than the Interstate Commerce Commission, but the President of the United States is overburdened with innumerable duties, and the Interstate Commerce Commission is a tribunal better equipped than any other in existence to settle a dispute of this kind, and I think it ought to be charged with that responsibility. There is an appeal from it by the carriers whose property is taken, but not by the public. The carrier has an appeal to the courts for justice if it thinks the Interstate Commerce Commission has denied it, so I would center the authority there to deal with what I think is a most complicated question.

There is another phase to which I would like to call the committee's attention. Commissioner Anderson will probably know as to this. I will illustrate the point by stating that I was told by the general attorney for the Rock Island Railroad last week that a considerable part of their equipment had been ordered east. The Rock Island is well equipped. It has added a large amount of rolling stock to its equipment during recent years. It has new engines and new cars and has been serving its territory and its constituency well. There has been no congestion on the Rock Island this year in our section of the country. There have been but very few complaints, fewer complaints, indeed, than might be expected coming to the commissions in the States through which it runs. That equipment has been ordered east. It no longer controls it. It is to be used on other tracks and by other carriers.

Is there any method by which the damage done to that equipment can be determined? Who is responsible for it? To whom does the Rock Island look to for its use?

To illustrate, we will say that there is \$1,000,000 of equipment that is off the Rock Island tracks now and out of its control that has been directed to be sent to the east. Under the rules and practices between the railroads there is a charge for the use of cars. What is going to be the practice now since this is a common use? Does the Rock Island still keep its accounts with the connecting carriers and know where its equipment is and what rental is to be received, and is the carrier that has this equipment being charged in the same way, and are the accounts going to be adjusted in the same manner as formerly?

I will use illustrations in sections of the country that I am most familiar with. The Missouri Pacific has the shortest line between Kansas City and St. Louis. The Rock Island has a line that is longer. I take it for granted that the Government in providing for efficiency and rapidity of movement will order all traffic possible sent over the short line. It is a better track. It can be moved more efficiently. The Missouri Pacific's track is used very much more than it has been used heretofore. The Rock Island's equipment, because of its abundance and usefulness, may be used very much more than it would have used it.

How are these property rights to be adjusted between the carriers, and what plan is to be adopted for the purpose of settling and adjusting controversies that will grow up in that way?

Senator KELLOGG. Let me ask you: Do you not understand this bill to simply authorize the Government to agree with the Rock Island road, or if an agreement can not be made, through the Court of Claims and otherwise, to assess the damages for the use of the entire Rock Island property during the entire time which the Government uses it? The Government then uses it as it pleases, and those damages are compensation for the entire use. The Government pays no other damage incidental to diverting traffic, or to the use of its cars on another line. The Government, of course, will probably keep accounts between the railroads as to the use of the cars exactly as the railroads now keep them, but the payment that the Government makes per centum for the use of the road and property is its entire payment. That could not possibly be left open for incidental damages by reason of diversion of traffic because they are not damages. They are paid. The Government sends traffic where it pleases. It may not use the road at all.

Senator POINDEXTER. That is the object of taking it over, is it not?

Senator KELLOGG. Yes. That is as I understand it, Senator. I would like your view of it.

Mr. BRISTOW. I have not been able to satisfy myself as to what would be the effect if the Missouri Pacific, say, has been moving 25 trains a day, simply as an illustration, between Kansas City and St. Louis in handling its traffic, and the Government takes the property and moves 50 trains a day over the same lines, because it is the superior and the better line.

Senator KELLOGG. What difference does that make so long as the Government pays for the use of the road? The railroad does not get the income.

Senator CUMMINS. Senator, do you mean your inquiry to extend to this point? Take these two roads that you have mentioned. The Missouri Pacific, we will say, does a very much larger part of the business than it has heretofore done, and the Rock Island a very much smaller part of the business than it has heretofore done. That will mean that the Rock Island will be disintegrated, and at the end of the period when the property is turned back, the Rock Island will have comparatively little freight moving over it, and a great deal moving over the Missouri Pacific and it would take the Rock Island a long time to get back the business that it had before.

Mr. BRISTOW. That was not the point I brought up, Senator, but I am going to bring that up and give an illustration on it. As I understand Senator Kellogg, he thinks that maintenance and depreciation would cover the excessive use of these tracks and the wear on them so that if 100 trains a day were run over a line that formerly had carried but 50, that the use to that extent, as the additional compensation the road ought to have, if any, would be covered in maintaining it and keeping it in just as good condition as it was before.

Senator KELLOGG. Yes.

Mr. BRISTOW. Referring to the point that Senator Cummins suggested, take this illustration: There is the Burlington, the Alton,

the Rock Island, the Missouri Pacific, and the Wabash running between these two cities. The Missouri Pacific is the short line. It will be used more, I take it for granted. The Rock Island is a longer line and not a very good track and not very efficient, but it has very fine connections west of Kansas City, so that it does a lot of business. It has been in operation, I think, 12 or 13 years. It has accumulated and acquired a very desirable business out of St. Louis through its agents and representatives that have sought the business. That business will be diverted and it will lose it.

At the end of Government occupation, we will say, the traffic has been reduced from 1,000,000 tons a year of revenue freight to half a million tons of revenue freight. The Rock Island Co. has got to set the same agencies to work and incur the same expense, and probably more, to get back the business which it lost, which has been taken from it. The Missouri Pacific will undertake to hold it. It has benefited very largely by Government control in the volume of the business. The Rock Island has lost. Does not that open a claim for damages in equity that can be brought? A gentleman here yesterday from North Carolina with a little road said that he had lost, I believe, 40 per cent of his business or something like that.

Senator KELLOGG. What is your idea?

Mr. BRISTOW. I think it is a valid claim myself. I may be wrong. I am not a lawyer. But if the Government takes my property and injures it and destroys business which I have built up, possibly spending a lifetime in doing it, it is not right to destroy that without remunerating me.

Senator POINDEXTER. Senator Bristow, a good many of these almost infallible difficulties, which you are describing, would be entirely obviated if the Government kept the roads, would they not?

Senator KELLOGG. Permanently you mean, Senator?

Senator POINDEXTER. Yes.

Mr. BRISTOW. No; not obviated, Senator Poindexter. If the Government kept them there is a period between the taking of the property and the ownership of the property if it should ultimately acquire them. These controversies will exist and the claims will accumulate until the ownership is changed from the present owner to somebody else.

Senator POINDEXTER. If a standard of compensation for the entire value of the property were fixed, in case the property is not given back at all, then there would be no occasion to go into these questions, would there?

Senator TOWNSEND. As of what date would you fix your value?

Senator POINDEXTER. That would be a matter to be determined. If you fix the value now, of course that would be comparatively simple.

Mr. BRISTOW. If you would fix the value at the date the Government took them, and compensated them for the value of the property at that time, it would eliminate these difficulties. I think that is true.

Senator POINDEXTER. Yes.

Senator KELLOGG. When the Government takes the property and agrees with the railroad to pay it an annual income for the use of the property, that covers all of the damages except the maintenance which the Government is liable for, does it not?

Mr. BRISTOW. Do you think that covers the damages as illustrated in this Rock Island and Missouri Pacific case?

Senator KELLOGG. It does, absolutely, as a matter of law. The Government is not liable for anything except the annual rental of the property.

Senator CUMMINS. Senator, suppose a man rents a piece of property and the lessee so uses it that at the end of the lease it is not worth half what it was when it was leased. I agree, legally speaking, under this bill there would be no damages, but morally speaking, there might be a great deal of damage.

Senator KELLOGG. There may be morally, but legally the Government is not liable.

Senator UNDERWOOD. Your illustration, Senator, depends on the terms of the lease, unless there is a tort committed or an effort to damage the property otherwise. And ordinary lease on a piece of real estate usually provides for that contingency.

Senator CUMMINS. But there are no terms here. We are dealing with a situation in which there may be an agreement as to these things and there may not be.

Senator UNDERWOOD. If there is not, and they go to the Court of Claims, we have no power to fix it anyhow.

Senator CUMMINS. No; but the Court of Claims could not and would not award any damages of the kind that Senator Bristow has been speaking about, whereas in morals there might be a very well bottomed claim.

Mr. BRISTOW. You think the Court of Claims would not award damages in a case of that kind?

Senator CUMMINS. I do not think it would.

Senator KELLOGG. I do not think it could.

Senator ROBINSON. I do not think so, either.

Senator CUMMINS. I do not think it could, because we are exercising the power of eminent domain. We are not proceeding with the consent of the carriers.

Senator ROBINSON. But if the circumstances justified, that could be made an appropriate subject of future legislation, just as a great many other things are.

Senator TOWNSEND. I think that would be clearly an element that entered into it, if you proceeded under condemnation proceedings, if you entered into an agreement, a mutual agreement between the railroads and the Government; but if that question is not included in the settlement in the beginning, they would be foreclosed or estopped from setting up a subsequent claim, in my judgment.

Senator CUMMINS. If the carriers would forego any claim of that kind that would be a different thing.

Senator UNDERWOOD. Leaving out the question of maintenance, it seems to me that the question is clear on two points. The first is, we are trying to provide for the President to make a contract with these carriers. The future status as to damages, outside of the question of maintenance, would be covered by that contract absolutely. What the parties contract as to what the damages shall be, or the payment for the taking shall be, will be binding on them in the future. Any two parties can make a contract if they have power to do so. If they do not make a contract, then, as I understand the law, we have no right to put a limitation on the finding of the Court of Claims.

Senator CUMMINS. But we can enlarge the jurisdiction of the Court of Claims.

Senator UNDERWOOD. We can go into the Treasury, Senator, now or hereafter and make an appropriation and give away the Government's money if we want to.

Senator CUMMINS. And it is looking forward to that moral or equitable claim that gives some of us a good deal of concern.

Mr. BRISTOW. In section 4 there is a provision that if there are improvements and betterments, or extensions made to the property, the carrier may make them by the consent of the President, from its own capital or surplus. It seems to me that that authorizes the carrier to take its surplus earnings, after dividends have been paid and all the obligations, the interest, and maintenance, have been met, and invest in additional property, and then charge a return on such investments. It is a disputed question. I do not think that the railroad companies should be permitted to capitalize their earnings, if they are excessive, after it has paid adequate returns on the property and met all of its obligations of operation. I do not think excessive earnings should be charged, when used for betterments, as a capital investment.

Commissioner ANDERSON. May I interrupt there, Mr. Chairman? When I found that that interpretation was put upon that, as brought out by Senator Cummins's suggestion, instead of the interpretation that I expected would be put upon it, that it was a mere measure of war finance, not prejudicing the ultimate proper decision of that mooted question, I prepared a redraft of section 4 so that by no possibility may it be said that Congress has, in a measure, intended simply to deal with war finance, settled or prejudiced the proper settlement of that important question.

Mr. BRISTOW. That is dealt with, then, in an amendment that you will suggest—

Commissioner ANDERSON. As I now have it, if I should read it into the record, it provides that the standard to ascertain the return of any carrier should be increased by an amount reckoned at a rate per centum to be fixed by the President for the cost of any additions or improvements. And then this is another possible insert which may be thought desirable to meet the just needs of certain carriers:

Made during the six months ended December 31, 1917, and paid for by such carriers out of the proceeds of loans, or stock, such return shall also be increased in like manner for the cost of any additions and improvements made to the property of any carrier while under Federal control, with the approval of the President.

That is the way I have it for further consideration.

Mr. BRISTOW. But that would permit them, I gather, to use surplus excess earnings as a capital investment and through the consent of the President.

Commissioner ANDERSON. There might be some possibility of a use of that kind.

Senator KELLOGG. Can there be any objection to a railroad using some of its surplus for betterments and improvements in the future—I am not speaking of the past at all—if it is added to capital?

Mr. BRISTOW. No; I think that possibly the depreciation fund that the Interstate Commerce Commission requires to be set aside could be used in some way as a revolving fund. Just how I would not

want to say because it will be somewhat difficult to determine. But, Senator Kellogg, you know that under the new system of accounting when public service corporations acquire a depreciation fund they have a considerable amount of cash on hand that is not needed now but ultimately will be. The best method of disposing of that cash and still not having it made a part of capital is a very difficult problem in accounting. It ought to be done and the account so made that it can clearly be traced. I think there ought to be not a declaration that excess earnings can be capitalized, but that they can not be capitalized. I think the bill ought to be more definite than it is here, and possibly the language which the Commissioner has used may do it. I would want to study it a little further.

Senator KELLOGG. You do not think they should undertake to go back and recast the railroad's accounts in the past? The Government has taken them over now.

Mr. BRISTOW. As a general thing that would be exceedingly difficult. I do not think that surplus earnings should be capitalized. Then the book value is very misleading.

Senator KELLOGG. They do not use that to compute the returns.

Mr. BRISTOW. But it is given to the public that this is only four and three-fifths or five and three-fifths per cent on the value of the property, and it is so insidious, so false, and so ridiculous that it ought to be challenged at any time it is declared. I want the opportunity of showing that the book value that is presented in these statistics submitted by witnesses here is the most unreliable, unsubstantial and unfair proposition that can be submitted to intelligent men as a basis to compute any return.

Commissioner ANDERSON. Mr. Chairman, may I ask some questions there?

I take it you would agree if you had been charged with the main responsibility of working out some sort of a draft as a basis for better minds to perfect, that in these war times we ought to avoid as far as possible every contentious question of policy and not bring into this supplementing financing bill any of the mooted questions of policy that could be avoided. We would agree to that, would we not?

Mr. BRISTOW. I agree to that.

Commissioner ANDERSON. And you agree that the question of the excess surplus is one of the most exciting controversies that there is in this whole realm of public utility law and finance. That we agree to. We get about as mad about that as anything on both sides, do we not? The other thing is this: You would agree also if these carriers are to have out of standard return, as some of them will, a substantial amount of money in excess of their interest charges and dividends, that ought not to be tied up and made dead money during a period of war stress. It ought to be made a nimble dollar, ought it not, and get to somebody for use as quickly as possible? That is a desideratum, is it not?

Mr. BRISTOW. If I understand you, yes.

Commissioner ANDERSON. I should be grateful in the light of those desiderata to have somebody work out a measure that would put that surplus into use without prejudicing one way or the other the ultimate disposition of that excess surplus. That is what I tried to do and did not succeed very well in, apparently.

Mr. BRISTOW. Now, I tell you, Commissioner, I can not make any suggestion that can be of much value to the committee in regard to that. I should say that on this committee are men far more capable than I am. Some of the most experienced legislators that we have in the country are here. The principle is what I am discussing, and that I think ought to prevail.

Senator CUMMINS. Commissioner Anderson, I have done that very thing. Mine may be quite as imperfect; the chances are it is more imperfect, than the one proposed by yourself, but at least it will express my view of the way we ought to deal with that question, changing perhaps very materially the standard return.

Commissioner ANDERSON. You have made a draft, Senator, you say?

Senator CUMMINS. What?

Commissioner ANDERSON. You have made a draft to meet that?

Senator CUMMINS. I have made a half a dozen. I am not ready yet to present any of them.

The CHAIRMAN. Which one will you take?

Senator CUMMINS. The idea is the same in all, but Commissioner Anderson understands better than anybody else, probably, the difficulty of taking the terminology of the Interstate Commerce Commission in describing the various accounts kept by railway companies, and through that terminology expressing accurately an idea which is easily understood when stated in common ordinary form, and my whole difficulty has been in using the phraseology that will, when applied to the accounts of the Interstate Commerce Commission, express the exact idea.

Now, I will have it ready. As far as I am concerned it will be ready to introduce in the Senate and be referred to the committee by the time the committee comes to consider amendments to the bill.

The CHAIRMAN. Senator Bristow, the question I wanted to ask you was, this surplus that is over and above what is necessary to pay the interest and expenses, how would you induce it to be used—in betterments and improvements on the road, without offering some remuneration for its use? What remedy would you have? You say you object to its being capitalized, and yet if we allow an additional return to these roads for the use of that money, when they have invested it in betterments and improvements, that is capitalizing? What methods have you to suggest, or have you any, by which we could use that surplus which Commissioner Anderson points out would be dead capital unless we did get it back in? How do you suggest that we get it without offering some remuneration for its use?

Mr. BRISTOW. Senator Smith, that involves, I think, the most difficult problem in transportation matters, and if you will pardon me, I will illustrate just how it does. You will kindly excuse me for using roads that I am familiar with, but it illustrates the idea. The Union Pacific Railroad is a very prosperous road; the Missouri Pacific is an unprofitable road; it is not prosperous.

Senator ROBINSON. It is not unprofitable now; it is exceedingly profitable, to my view.

Mr. BRISTOW. Just the last year, though. Whether that is temporary or not, I do not know, but the point I am going to illustrate I can illustrate better by using those two roads.

We had a rate case in Kansas which we decided some time ago as to what was a fair rate for passenger traffic. It appeared plainly to everybody that a rate that would be profitable and fully adequate to the Union Pacific, and that would provide a very liberal return for the use of its property—the Missouri Pacific and Union Pacific running through competing territory—would not be profitable or adequate to the Missouri Pacific. A rate that would be remunerative to the Missouri Pacific would result in the accumulation of a very large surplus for the Union Pacific.

Senator POMERENE. Do you object to stating briefly there the reason for one being profitable and the other being unprofitable?

Mr. BRISTOW. I will illustrate that. It is the location. There is the main line of the Missouri Pacific running from Kansas City to Pueblo, of the Union Pacific from Kansas City to Denver, and they parallel each other across our State. The Union Pacific from Kansas City to Salina, Kans., is 186 miles, on the Missouri Pacific it is 226 miles, or 40 miles farther. Salina is the largest town that these two roads pass through between these two terminals and its business of course is very desirable.

There is the passenger rate of 2 cents a mile for intrastate traffic and 2.4 cents a mile for interstate traffic. The Union Pacific gets the business because it is shorter and has a better service, and the people go by the short line that gets there the quickest and which is the most comfortable. The result is that nineteen-twentieths of the passenger traffic out of Salina to Kansas City goes to the Union Pacific in preference to the Missouri Pacific. The Missouri Pacific can charge 2.4 cents per mile, or 2 cents a mile for intrastate, but it does not do it. It does not charge what it is permitted to charge. It hauls these people for the same price that the Union Pacific does. That is, it meets the rate of the short line road.

Senator KELLOGG. It is obliged to, I suppose.

Mr. BRISTOW. It has got to or it would not get any business. Now, a rate that is exceedingly profitable to one is unprofitable to the other. There is no rate that you can give the Missouri Pacific to help it unless you increase the rate on the Union Pacific. If you increase the rate on the Union Pacific you are charging the patrons of the Union Pacific road more than they ought to pay.

Senator POINDEXTER. If you increased it on the Union Pacific would the Missouri Pacific, notwithstanding these handicaps that you speak of, get enough passenger business to pay it?

Mr. BRISTOW. Well, it would pay it more than it does now, if you increase the rates.

Senator POINDEXTER. I mean would it be profitable to it?

Mr. BRISTOW. I think not. I think there is a condition where you can not help but create a surplus, an excessive surplus in one case or refuse to permit a road to have an adequate return in the other. The question is one of those insoluble questions.

Senator UNDERWOOD. The only real solution of the question is to consolidate these railroads in zone systems and let a great stock company own all of the railroads in that zone.

Senator POMERENE. No, Senator, that is not the only method. Adopt Dr. Garfield's rule here and close down the prosperous road.

Mr. BRISTOW. With the permission of the committee, I am going to submit a plan before I get through if you gentlemen will have patience to listen to me, which I think would be better than this—with due respect to Commissioner Anderson. I say this with great reluctance.

Under section 6, I would be glad to inquire what line 25 means.

* * * a revolving fund for the purpose of paying the expenses of the Federal control and any deficit of any carrier below such standard or ascertained return.

Is this \$500,000,000 in the nature of a working capital with which the Government now goes into the transportation business?

Senator UNDERWOOD. I do not understand that the question is addressed to me, but I understand from the testimony before the committee—you have not heard it—that it is proposed that this \$500,000,000 shall be used for renewals, which was testified here amounted to something above \$400,000,000, within the next two years.

Senator KELLOGG. You mean betterments?

Senator UNDERWOOD. No; for the renewals of the bonds and stocks. That the securities of the roads must be met in the next two years, and they amount to something over \$400,000,000. It is proposed to use this \$500,000,000 to take care of those securities when they fall due, if necessary, and also for the furnishing of additional rolling stock. That was the testimony that was given to the committee.

Senator CUMMINS. Additional terminals and facilities of all kinds.

Senator UNDERWOOD. I mean rolling stock and facilities.

Mr. BRISTOW. Well, paying the expenses of the Federal control.

Senator KELLOGG. They can pay their employees out of that. I suppose. You can create a great bureau here and pay them all.

Mr. BRISTOW. The reason I inquired is that I did not know just what was contemplated or what would be covered by that term, "expenses of Federal control." Of course that would depend as to how great a bureau would be created and the number of employees that would be necessary, and the extent to which the Government proposes to take part in the detail operation.

Senator KELLOGG. If you can tell us, we would like to have some light on it, I think. I do not know.

The CHAIRMAN. I think, Senator Bristow, Commissioner Anderson stated that this \$500,000,000 was about in line with the estimate of what would be the maturing obligations of certain railroads taken over by the Government that had to be met and possibly should be met by the Government, in order that whatever financing the Government might otherwise be called upon to do, it might not be embarrassed by leaving this to be met otherwise.

Senator CUMMINS. No one ought, I think, to get the idea that the use of the \$500,000,000 is limited to refinancing the maturing obligations. It is assumed that the Government would be required to add very considerably to the railway property in terminals and warehouses, and other things, and this money is to be used for that purpose as well.

Mr. BRISTOW. Gentlemen, I do not think that you ought to take any money out of the public treasury to pay for this railroad operation. I believe that the handling of the commerce of the country by the common carriers should pay its own way, and when you go into the public treasury to make up deficits and to establish that as a policy, what will it lead to? I do not think any human mind can foretell.

Senator POMERENE. Senator, there might be this position. Suppose it became necessary to move war supplies or to accommodate plants built for that special purpose. It might necessitate the building of additional sidings and so forth that would be of no earthly use to the common carrier after the Government had completed them.

Mr. BRISTOW. Should not that be done by the military establishment?

Senator POMERENE. That is the Government.

Mr. BRISTOW. Yes; but then this is a vague and indefinite term, "expenses of Federal control." What do those expenses consist of? If you remember, Senator, we constructed the Panama Canal. We built railroads there and side tracks, etc., which was paid for out of the canal funds, and the Government has done this kind of work through the the Military Establishment—constructed sidings and additional railway facilities at different military posts?

Senator KELLOGG. I do not think so.

Senator UNDERWOOD. Oh, yes; he is correct about that.

Mr. BRISTOW. That is done, as I understand, and has been done for generations. As I understand it, the military establishment, where it is for military purposes, proceeds to build whatever is needed, and then after the military necessity is over and it is of no further use it is destroyed, and it is a loss to the Government due to military necessity.

Senator UNDERWOOD. I understand the procedure in those cases. There may be exceptions which I do not know of. The procedure has been that the Government calls on a road to put in certain sidings; they have the Government engineers estimate what it is necessary to have go in, and submit an estimate of what it will cost. The railroads then enter into an agreement to put it in at a certain price, the Government paying the money out of the war funds.

Mr. BRISTOW. That is the way it is done in civil life. If a man constructs an elevator and desires a siding to the elevator, he pays the railroad to construct the siding to the elevator and the railroad operates it; but the expense of that siding is chargeable to the beneficiary and he pays the bill.

Senator UNDERWOOD. I understand that is the way that it is done by the Government.

Mr. BRISTOW. I so understood. Of course, afterwards the railroad may absorb that expense as a part of the freight charge. That has been done.

Senator KELLOGG. Senator Bristow, here is \$450,000,000, it appears to this committee, of the maturing obligations of the railroads which have been taken out of their hands. Now, if the railroads issue new securities for those maturing obligations, as I suppose they will, who is going to take them pending the Government control? Who is going to carry them for the railroad?

Mr. BRISTOW. Well, it might be a very great difficulty for the carrier to get anybody to do it. I think that is true.

Senator CUMMINS. I see no difficulty there. The Government has guaranteed an income to the railroads which will pay the interest on any new bonds which may be issued.

Senator KELLOGG. Oh, certainly.

Senator CUMMINS. Or stock that may be issued.

Senator KELLOGG. Certainly; but I mean who is going to furnish the money? The question is whether the railroad can go into the market now and place those bonds.

Senator CUMMINS. The fellows who now own them would be very glad to take the new ones rather than put the money up to the Government at 4 per cent.

Senator KELLOGG. I do not know about that, but perhaps the roads who have temporary notes out could sell them again. I do not know of anybody who would buy them.

Mr. BRISTOW. The "expenses of federal control," that phrase, attracted my attention. I do not believe that the Government ought to take money out of the public Treasury to maintain the expense of operating the transportation system of the United States.

Senator KELLOGG. I agree with you about that, but suppose the Government establishes a great central bureau here for direction under Mr. McAdoo, in addition to the men who are operating the railroads, as they now exist; what do you suggest should be done by that bureau?

Senator UNDERWOOD. It is customary in those cases to come to Congress and make an estimate of what is needed and appropriate the money when it is needed.

Senator KELLOGG. I do not know about that.

Senator UNDERWOOD. It is a Government bureau. That is undoubtedly the safest way.

Mr. BRISTOW. I think that would be much better to have an estimate, to find out how much money is needed, and the specific purposes for which it is to be used.

On page 5, lines 18 to 23:

Any loss claimed to accrue to any carrier by reason of any such additions or improvements so ordered and constructed may be determined by agreement between the President and such carrier; failing such agreement the amount of such loss shall be ascertained as provided in section 3 hereof.

That is for the construction of additional property, additional facilities, which the President thinks is necessary and orders the railroads to do.

"Any loss claimed to accrue to any carrier by reason of any such additions or improvements so ordered and constructed may be determined by agreement," otherwise by the processes that are provided for other losses. It seemed to me that the construction, if for military purposes, ought to be done for military purposes and ought to be paid for out of the funds appropriated for military purposes; and if done for the purpose of handling commerce, which is the business of the carriers, in order to give it adequate facilities, there is no possibility of any loss, it is simply a benefit to the carrier to have the additional facility provided, and the Government pays for it, and it is under obligations as provided in another section to be reimbursed. the Government is, according to such terms as are agreed upon.

I cannot understand how any loss claimed to accrue to such carrier by reason of any such additions and improvements would be necessary. It seems to me that that simply opens up another opportunity for a series of claims to be submitted. I would strike that out.

From said revolving fund the President may expend such an amount as he may deem necessary or desirable for the purchase, construction, or utilization, and operation of boats, barges, tugs, and other transportation facilities on the inland and coastwise waterways, and may in the acquisition, operation and use of such facilities create or employ such agencies and enter into such contracts and agreements as he shall deem in the public interest.

Now, is that for military purposes or is it for commercial purposes that these boat lines ought to be established, and barges provided and transportation facilities furnished? If for military purposes, it ought to be paid for out of the appropriations for military purposes, such as are usually made. If it is for commercial purposes, then we are authorizing the Government of the United States to establish boat lines, commercial boat lines for the purpose of handling commerce. If it is for the use of the Army and the Navy, it should be provided for in the appropriations of those two departments. If it is for the purpose of establishing commercial lines to handle commerce in addition to the existing commercial lines, or in competition with the existing commercial lines, then it ought to be organized upon an entirely different basis, and proceeded with in an entirely different way.

Senator KELLOGG. Under the amended bill which has been suggested to us, it includes canals, authorizing the President to purchase canals in addition to boats, barges, tugs, and so forth.

Mr. BRISTOW. Now, I am not passing upon the desirability of the United States Government going into that line of business and becoming a transportation agency. I am not saying that it is wise or unwise now. I have views upon it. But if it is to do it, and this is determining that it shall, then I think it ought to be organized along a system, and we should define that system. We are constructing a railroad in Alaska. We are operating a boat line—the Government is. I say the Government owns a boat line and a railroad that operate from New York to Panama. And that is a corporation of which the United States Government owns all the stock. It is operated as other corporations are. There are various systems that have been suggested for the Government operating transportation lines and facilities, railroads, steamboats, or anything else. But, gentlemen, it seems to me, with due respect to those who have made the suggestion—and I do not want to be critical in any way—this is not the way to go into that business.

Senator UNDERWOOD. You do not believe that we ought to take \$500,000.000 and turn it loose to roam around as it suits itself?

Mr. BRISTOW. If we are going into that business let us organize in a different way to do it.

The CHAIRMAN. Suppose these waterways and canals become necessary to relieve the congestion that necessarily arises in this conflict, in order that military supplies may move easily, what other way would you have than providing right now in this emergency to utilize and take advantage of them?

Mr. BRISTOW. Well, Senator Smith, I think that if there is a canal or a boat line that is in existence that is needed for the purpose of

moving military supplies, and that they are necessary in an emergency, the Government simply ought to take possession of it and move the supplies, and then turn it back. That has been done upon numerous occasions. A boat would be commandeered and turned back, and the damages for the use settled. But this apparently is the establishment of new transportation lines. If it is for military purposes, pay for it out of the military funds that are provided for that purpose as a military necessity, whether it is for the Navy or for the Army, instead of appropriating money here in this vague and indefinite way. It seems to me that if we are going into the transportation business, as this provides, we ought to give more attention to it than this paragraph does.

As I understand it, a Government, our Government at least, has been confronted many times with grave military necessities. During the Civil War we took possession of steamboats and railroads to move the troops, and then, when the normal operation of commerce was restored, they were given back to the owners and were operated as usual?

The CHAIRMAN. Do you think that this contemplates going beyond that?

Mr. BRISTOW. If it does not go beyond that there is not any occasion for it, because all the power that can be given to any Government for military purposes the Government now has.

Senator KELLOGG. The Government has taken over all the water lines connecting with the railroads now under this proclamation.

Mr. BRISTOW. Then is this for the construction of additional?

Senator KELLOGG. Yes; this is for purchasing canals.

The CHAIRMAN. If it is necessary.

Senator KELLOGG. For the purchasing of boats and barges.

Mr. BRISTOW. Well, if the Army and Navy needs such facilities, the congress has provided the means—if it has not provided the means it probably will provide any transportation facilities which either of them need. I do not see any use for this except for commercial purposes, and if it is for commercial purposes then we ought to go at it in a different way.

Senator CUMMINS. Senator Bristow, I think that we probably do not fully take in the theory upon which this is being done. It is being done, as I understand, upon the hypothesis that all business and all commerce has now become a part of the war establishment, and that it is just as much a part of the War Department to move the business which we have hitherto called commerce as it is to move supplies for an army or move troops which compose the Army.

The CHAIRMAN. Or to stop them all.

Senator CUMMINS. We are militarizing the entire civil affairs of the United States.

Senator GORE. It is a nation in arms.

Senator CUMMINS. As I understand it. I am not criticising it, but the bill has no other possible interpretation.

Mr. BRISTOW. I do not think that ought to be done myself. I may be mistaken in it, of course. I do not think there is any occasion to establish a military government in the United States at this time. I do not think that the United States should be treated as a military reservation now. I do not think so. I am in perfect sympathy with

any movement that will improve our transportation system. I think it needs improvement. I think it has broken down, but I do not think that the establishment of boat lines is a wise one as provided here.

Senator CUMMINS. You will remember that the act under which all this is being done or has been done authorizes the President in time of war, in this emergency, through the Secretary of War, to take possession, to use and control the railway and the transportation systems of the country. That is the sole authority which the President has.

Senator TOWNSEND. I think you are absolutely right, though, Senator Bristow, that there is another suggestion that somebody has put in this bill to meet a possible contingency of Government ownership, and that is running through this bill. I believe you have hit it square. That is the way it strikes me.

Senator KELLOGG. To get ready for it.

Senator TOWNSEND. Yes. It strikes me it was not solely for the purpose of meeting an existing emergency, but to meet a future contingency that possibly could be met.

Senator POMERENE. What feature of the bill have you reference to?

Senator TOWNSEND. He has mentioned one here very clearly. I can not conceive of that revolving fund, and I have not thought of it at any time, except with that in view—buying canals. Why buy canals? Why not lease canals the same as you do the railroads on this basis?

Senator GORE. You can use a canal without leasing it.

Mr. BRISTOW. The observations I have made upon that section, the latter part of section 6. I think it is of great consequence and invite your attention to that phase of the bill.

Commissioner ANDERSON. May I add, Mr. Chairman, a question about that latter part of section 6? It is quite clear, is it not, Senator, that in war times the Government will order, as in Massachusetts, a lot of additional improvements put around the cantonment there. It is quite clear that you do not want to mix them up, if you enlarge your roads, and have one strip owned by the United States and one by the railroad. That railroad with its own forces in most cases can do that work a good deal cheaper and quicker and more efficiently than if the United States could put its Army engineering forces on there. That is clear, is it not? It is also clear that when the war is over that stuff will probably be worth more to the carriers than to the United States, or anybody else, either to use or to junk, will it not?

Mr. BRISTOW. That might be or it might not be, that would depend upon circumstances, but I see what you are leading to, Mr. Commissioner. The Government does that and it ought to do it. It does it now through the military establishment. It has been doing it this year and at other times, and during other wars, and it ought to continue to do it, and then after the war is over the adjustment is made.

Commissioner ANDERSON. This proposes an adjustment as you go along to that extent, and if you do not have a provision at the end of section six giving the carriers due process of law to take care of expenditures made for public instead of private benefits, the section would be unconstitutional, would it not?

Mr. BRISTOW. Well, I think the practice heretofore has been for the Government to make those expenditures or to pay the carriers for the additional work that is put on them for military purposes,

and then after that is done, if the Government no longer needs it, the Government shall sell it to the highest bidder and get what it can out of the junk or the residue.

Commissioner ANDERSON. Would not that cost the Government a good deal more than it would to proceed under the plan in section 6?

Mr. BRISTOW. I do not think so, Mr. Commissioner. I think that the last paragraph of section 6 is dealing with another subject other than the one we have just discussed.

Commissioner ANDERSON. No, not at all. It is intended to meet exactly the situation and nothing else.

Mr. BRISTOW. Now, have we ever had any difficulty in the past in meeting expenditures of that kind through the regular established channels?

Commissioner ANDERSON. We never had any war with Germany before, so I do not know.

Senator UNDERWOOD. The real trouble with the section is that it seeks to make a very large appropriation without any limitations on the power of Congress to control it, as is customary; is not that it? In a bill of this kind it is customary to define the powers that you grant to the executive officer, and then let the executive officer come back to Congress and through the appropriate channels ask for the money that is needed. Is not that the real question you have in mind, Senator?

Mr. BRISTOW. For military purposes I think that is absolutely sound; but I think this goes beyond that. Commissioner Anderson says it is not intended to. I think it does. I think it goes beyond any military expenditure. It is establishing, or authorizing the establishment of new transportation lines and it may be wise and desirable from the commercial point of view to do so, but it ought to be done in a different way.

Section 7 provides that the President may authorize these carriers, the existing carriers, to issue additional securities, by mortgage or otherwise, and—

may purchase for the United States all or any part of such securities at prices not exceeding par, and may sell such securities whenever in his judgment it is desirable at prices not less than the cost thereof; any sums available from the revolving fund provided in section six may be used for such purposes.

That section 7 covers the purchase of these securities. I think it would be better, and it is easily ascertained as to what securities will mature and as to what companies own them, to submit an estimate as to the amount and let an appropriation be made for that specific purpose.

Senator KELLOGG. Let me suggest something right there. An estimate has been made of about \$150,000,000. But suppose a company was prepared to buy its own cars, as many of them are, and a part of the money it would have to raise by new securities which it could ordinarily place. Or, it needed an additional terminal and a part of the money it had to raise by bonds. The question is, how are they going to sell their bonds during the period of the war when the roads are in the hands of the Government?

Mr. BRISTOW. As I understand section 7, it provides that the Government may buy those bonds.

Senator KELLOGG. Yes; I say if that was not there, how are they going to sell their bonds in these times?

Mr. BRISTOW. Senator, of course, that is a thing that no man can answer. It may be that if the railroads were independent pieces of property and operating as they have in the past, their bonds would be worth as much as those of the Government of the United States. You can not tell.

Senator KELLOGG. The first mortgage Northern Pacific bonds of less than \$20,000 a mile on the property, which, of course, everybody knows are perfectly good, and which bonds have been used by the Government as security for deposits in banks and are owned by savings banks all over this country, have gone down 20 points in the last two years.

Mr. BRISTOW. But, Senator Kellogg, the records show and statistics confirm the fact that railroad bonds have not depreciated in value any faster than other bonds—the bonds of cities and other utilities, or the bonds of governments.

Senator KELLOGG. More rapidly, yes. Foreign governments, yes; but this Government, no.

Mr. BRISTOW. This Government is just in the war less than a year. No human being can predict what the securities of the United States will be selling for in a year from now any more than what the securities of the railroads will be selling for.

The railroad being so involved and so entangled with Government operation, as this bill provides, and as the general military conditions seem to require, their securities may in the future go down faster than they otherwise would. I do not have any serious objection to this, but I think it ought to be a separate obligation which the Government gets under, if it is necessary, and which the property owners assume, and that it ought not to be involved with this \$500,000,000 floating fund. That was the suggestion I had to make as to that.

Senator CUMMINS. There is another point there that has bothered me somewhat. This gives the President authority to buy stocks as well as bonds. There are a great many railroads in the country whose stock is worth a great deal more than par, measured by the dividends that have been and will be paid upon the stock, and the provision as it is would entirely preclude the President from giving any relief in the way of purchasing the stock from the companies that were in such financial condition that their stock is worth more than par.

Mr. BRISTOW. I had not thought of that, but I see it does; that is, the Burlington is above par. This would forbid the President from buying Burlington stock, would it not?

Senator KELLOGG. I do not think he would ever get a chance to buy any of that.

Senator CUMMINS. Unless the Great Northern and Northern Pacific think the railroad stock pretty good, the Government might buy some from those companies.

Mr. BRISTOW. There is another matter, Senator, that I want to speak of, which was referred to by Mr. Walter this morning, I think that the matter of making rates should remain exactly as it is now.

I think this is of tremendous consequence. For 30 years the Interstate Commerce Commission has been in existence and its usefulness has grown, and the powers conferred upon it year after year by Congress have increased until now it is the authority that fixes the interstate rates. The method by which rates may be changed is becoming well established. All of the rules and regulations and the laws that govern such things have been defined or are being defined. The Interstate Commerce Commission has been a body of men that measure up in integrity and intelligence with any such body of men that might be selected for any such purpose by any process that might be determined upon. Rate making is an exceedingly complicated subject.

There is no subject relating to American commerce and industry that more vitally affects the welfare of every community in the United States than does transportation rates. To give one man—I do not care whether he be the President of the United States, the Secretary of the Treasury, or the Chief Justice of the United States, or any other dignitary or public servant—the authority to make railroad rates, to change them at will, unrestrained, and without any rule for his guidance, is the most preposterous thing that has yet been proposed in the history of the United States, in my opinion.

We have a Post Office Department that collects—I do not know what it is now—but approximately \$350,000,000 a year. Congress prescribes the postal rates in detail which may be charged and the method by which they shall be collected. You might as well say in this bill, or the Post Office appropriation bill, that the President of the United States is authorized to conduct the Post Office Department and to fix rates and provide for its operation. The amount involved is \$350,000,000; the amount involved in this bill is \$4,000,000,000.

The Post Office Department does not affect one-tenth, or to the extent of one-tenth, in my opinion, the vital interests of the communities in the United States as the transportation rates affect them. You gentlemen that have given study to transportation know that a cent a hundred pounds will divert traffic from one section of the country to another. It will build up one city and make it a commercial emporium and it will destroy another. I care not how wise, or how great, or how patriotic and devoted to the public interest any man may be, it is not within the human mind to wisely pass upon those questions alone. I speak thus earnestly because I believe it is of such vital concern that every man should study it profoundly with a view of undertaking to comprehend the magnitude of the proposition.

We collect the customs and impose duties upon imports. You do not say to the President of the United States that he shall impose duties upon imports and collect them and operate a customs system. You fix the rates which shall be charged at the ports and the manner in which they shall be collected and disposed of.

You have an internal-revenue system, and you collect \$250,000,000 a year, or approximately that. That is what it was before the war, as I remember it, about \$250,000,000, but it has been thought wise through the generations that are past that Congress shall fix the rate for internal-revenue duties and the methods by which they shall be collected, and the disposition that is to be made of the funds. The same is true of the Postal System, the same is true of the Customs and Internal Revenue System.

Senator GORE. The same with the rate on Liberty bonds.

Mr. BRISTOW. True. Now, it is proposed here to wipe out the legislation of a third of a century, in State and Nation, by one bill, and throw the commerce of the United States into utter chaos by making it depend upon the will and decision of one man located in Washington. It is the most revolutionary thing yet proposed, in my opinion, in the history of the United States.

Senator CUMMINS. And that without any provision for a hearing on either side.

Mr. BRISTOW. On either side. If this bill is to pass and we are to change the transportation system that exists now as this provides, it ought by all means to provide that the agencies that existed on the date that these roads were taken over by the Government for the fixing of rates, and for the settling of disputes relating to rates, should be in full force and effect until changed by Congress; and, gentlemen, if you do not do it, your controversy as to coal will be a minor detail and of small consequence as to the results that may follow the confusion and the disaster in undertaking to interfere from Washington by a Cabinet officer or any director that may be selected with the intricate and involved rate complications which are so vital to the communities throughout the United States.

Senator POINDEXTER. Senator, I agree with you as to the tremendous importance of that, and in view of your active experience in the matter of rate making, as a member of a State commission, I wanted to get your opinion as to the usefulness now of the State commissions in a general way.

Mr. BRISTOW. Well, that is a pretty big question but I will be very glad to give it to you.

A great deal has been said in the public press recently about the usefulness of State commissions, and I am very glad to discuss that, Senator. I discussed it quite at length before the joint committee. I am a State commissioner at this time. I do not expect to be a great while longer, and I make this statement because I do not want the impression to prevail that I am speaking in behalf of a commission of which I am a member, and therefore I am influenced for personal reasons. The term for which I accepted the office I now have will expire shortly, and I expect to retire; I am speaking simply as a private citizen now, which I will be soon—interested in the welfare of the State and of the country as a whole.

I think it would be a great mistake for Congress to take from the State commissions the authority which they now have, especially in regard to rates. Now, I am not saying that there are not some questions involved in the controversy that has been prevailing as to the wisdom of some of the actions of a few of the State commissions. There have been some mistakes that should not have occurred. Most of them have been corrected by the processes through which such controversies ultimately are corrected.

The State commission only controls the local traffic. It has the jurisdiction within the State that the Interstate Commerce Commission has within the Nation. These commissions are composed of men of high standing. That is, they measure up with the public officers as you find them in different capacities in the Federal and State Governments. I have been associated with these gentlemen and

associated with other bodies engaged in the public service, and I think they average up pretty well. They are men of intelligence and they are conscientious. Some are more or less inefficient, as you will find in all public as well as private capacities.

But their purposes as a rule are good. They are dealing with local questions. I suppose I can illustrate it better by simply stating some things they do, and I happen to have here some of the same data that I had when I appeared before the other committee. I think I can illustrate it with that. A citizen will have a complaint against a railroad company for failure to furnish cars, to move his grain, or his product, whatever it is. Those complaints come in to the commission every day and the same is true of other commissions. It is the practice of the State commission to at once take the matter up with the local representatives, the operating officers of the railroad, and usually the matter is adjusted, frequently by telephone or by correspondence, or by personal interview as the case may be, and the complaint is adjusted.

If there is a congestion as there was at Ellis, Kans.—I will use some of the same illustrations, Senator Cummins, as I believe you are the only member of the committee, and perhaps Senator Robinson, who heard my statements before the Joint Committee in regard to car shortage. There was a congestion of wheat; the elevators were full: there were three elevators there. On the day I was there, there were 150 wagons waiting around the depots there to be unloaded. Some of those farmers had hauled the wheat 10 or 15 miles in there, and had been in the town for days waiting for the chance to unload. The Union Pacific did not have the cars there and could not furnish them. There was great congestion. Bitter complaints come. It is the practice of the State Commission, in cases of that kind, to set a hearing at the point that is affected. The commission or its representatives go there and the officers of the railroad and the public that is making the complaint; its representatives meet in a public hall something after this order; the citizens state their grievance; the officers of the railroad company state their difficulties. Some of these hearings are very animated, sometimes the rooms are packed with people, but the operating officers get the view of the public and their experience, and a graphic and forcible statement of their losses and their difficulties.

The complainant, the public, gets the point of view of the railroads and the difficulties that confront the railroads in fulfilling their obligations, and the commission, after hearing the argument and the statements decide the case and undertake to do justice. In 9 times out of 10 you will leave that community with a much better feeling than when you went into it. The American people as a rule are reasonable, the operating officers of the railroads are trying to operate their roads efficiently.

I want to say that my experience has been that the operating officers of the railroads are very earnest and sincere in their efforts to serve the public and the result is that a better feeling will be engendered between the carrier and the general public as a result of these hearings, and very few of the decisions of State commissions are ever contested, they are accepted by both sides.

As a result of this Ellis hearing we issued an order and defined a rule which the carrier should follow in the event that there was a shortage of cars. The rule was entirely acceptable to the farmer's organizations that were behind the complaint and was accepted by the carrier, and it has operated very satisfactorily.

Senator GORE. Is that rule copyrighted, Senator?

Mr. BRISTOW. No, sir; it is not copyrighted. I can furnish Oklahoma a copy if it desires.

Now, gentlemen, it is utterly impossible for the Interstate Commerce Commission to perform the function which the State commission performs in instances of that kind. The Interstate Commerce Commission sends out subordinate officers to hear such complaints. In the case of the State commission, the commission itself goes. The commissions as a rule have the confidence of the people. They are sometimes elected, sometimes appointed by the governor, selected in different ways; but they are a part of the constituency of that State, they are responsible in a measure to the people of the State. They are interested in and familiar with the operating conditions of the railroads. That is, it is to their interest, and it is their desire not in any way to interfere with their efficiency, because that would be detrimental to the State, and to the public as well, and when you undertake to take from such local commissions such power you make a grave mistake.

I want to make this academic observation, which I think you gentlemen all agree to. The sovereign authority in the United States is public opinion. That governs this country, and you have got to conform to it. The party in power has to, or it goes out—in State or Nation. You let the public opinion develop along wrong lines and it is injurious. The way to develop it along the right lines is to give the people the information that they ought to have, and that is a mighty good way for them to get the information they need in regard to transportation matters.

Senator POINDEXTER. How about a power of the State commissions? Under recent decisions of the Supreme Court of the United States as the matter stands at present, is there left sufficient power in the State commissions for them to perform extensive public service in the regulation of railroads?

Mr. BRISTOW. I think so. This last decision was helpful to the State commissions—that is, in our view of the case.

Senator KELLOGG. Which one do you refer to?

Mr. BRISTOW. The Illinois case, which was decided last Monday, I believe. That is very useful, and I think unless I misunderstand it, it is a step on the part of the Supreme Court toward sustaining the State commission in the performance of its legitimate State functions.

Commissioner ANDERSON. Mr. Chairman, may I ask a question. Assuming everything you say to be true, Senator, will you tell us how, practically, you can express it safely and more adequately than it is expressed in section 11, which sets forth that the carriers "while under Federal control shall, in so far as is not inconsistent therewith, or with the provisions of this act, or any other act applicable to such Federal control, or with any order of the President, be subject to all laws and liabilities as common carriers"; etc.?

Can you have a war control of your transportation system, necessarily exceptional and almost appalling in nature and extent, go any

farther back toward the old régime of law and order than we have gone in those two instances?

Mr. BRISTOW. I think, Commissioner Anderson, that you can.

Commissioner ANDERSON. I should like to see the draft that some competent and careful person will get up that will leave you the necessary power to deal with the war conditions, and at the same time preserve all that ought to be preserved of the existing regime.

Mr. BRISTOW. Mr. Commissioner, I had a conference with some other gentlemen and the director on Wednesday of this week, and he stated that he intended to permit the States to go on just as they were, and the Interstate Commerce Commission to go on just as it was.

Commissioner ANDERSON. Precisely, and I was some part of the cause of bringing about that conference and of the advocacy of the policy. I do not think there is any disagreement on the part of any one of us that tried to work this problem out, that there ought to be just as little encroachment upon the organized methods of conducting the business of the country, including rate making, and of the rights of the shippers with relation to the carriers and the rights of the shippers inter sese, as is consistent with the exercise of the war powers. I have heard no dissenting opinion on that. What I want to know is how you can put it in a statute more broadly and safely than we put it in?

Mr. BRISTOW. Mr. Commissioner, last week a complaint came to the Kansas commission from some place in Kansas in regard to some action of the Missouri Pacific Railroad. A letter was sent to the general attorney for the Missouri Pacific in Kansas stating this complaint and asking correction of the abuse or an explanation, and a letter came back stating that the Missouri Pacific Railroad was no longer responsible to the commission, that Mr. McAdoo was the Director General of the railroads and they were responsible to him alone. While Mr. Anderson and Mr. McAdoo say they intend that the State commissions shall exercise their functions, nevertheless Mr. McAdoo asserts that he has the power to at any time interfere with any of their functions.

Now, the Secretary of War or the Military Establishment under the war power of the President has the right to demand that any war movement have precedence to all others, but he has not the right to say what the rate from Salina, Kans., to McPherson, Kans., shall be, on a load of wheat, while Mr. McAdoo claims that he has.

Commissioner ANDERSON. That may not follow, but you admit it is not quite fair to attribute the responsibility to the Director General, who has now been struggling with this problem less than two weeks, because of the letter that some railroad lawyer had written under a misapprehension of the nature and extent of the powers, and you know as that is a practical result, partly the outgrowth of the conference between your representatives of the State commissions and the Director General, that a carefully drawn out order, worked out, I think, in conference with your committee, indicating the nature and extent of the expected encroachment upon the functions of State commissions, is now in process, so that every possible advantage is to be taken of existing machinery and every possible pains taken to conserve to the utmost all rights that ought not to be in-

terfered with in the efficient prosecution of the war. That you know, do you not?

Mr. BRISTOW. I know that is true, but then, Commissioner Anderson, there is one vital point there that you overlooked, which is the overwhelming and all-powerful fact that the Secretary of the Treasury as director of the railroads, claims the right.

Commissioner ANDERSON. Precisely.

Mr. BRISTOW. Claims the right to interfere with any rate or charge, local or otherwise, which any carrier may impose, and he can prevent any commission, State or interstate, from changing or compel it to change—or change himself—any rate, whether it relates to the war or not, directly or indirectly, under the provisions of this bill.

Commissioner ANDERSON. The same power which takes our boys and puts them in the trenches of France, has the same power to make the rates from point to point in Kansas, if it is necessarily part of the war power.

Mr. BRISTOW. Not any more than the changing of a postal rate, the increasing of the revenue rate, or the levying of a process on any other kind of property. Not at all. And the great fabric of transportation rates in the United States should be as sacred as any property right in existence, because the changing of them unwisely without due consideration can bring more wrack and ruin than a hundred coal orders that has been complained of so bitterly in the last 24 hours.

The CHAIRMAN. Senator Bristow, do you see any differentiation between the rates that may be charged on a railroad interfering with the prosecution of the war, as the railroad in its movement is basic, and the handling of mail or the port receipts?

Mr. BRISTOW. I do not think it is as direct. The only way that the rates on merchandise or on passenger rates between Springfield, Ill., and Bloomington can affect the war is by increasing or reducing the revenue of the carrier, and if the United States Government assumes all responsibility for the revenue of the carrier, as is alleged by Mr. McAdoo, to permit the States to pass upon that rate was authorizing them to determine what amounts should go in or out of the Federal Treasury.

If that is the case, if the commercial and industrial affairs of this country are so interwoven with the war movements that such is true, why then there is no rate in regard to anything that should not be affected. The price of a ticket to a theater affects the revenues of the United States. You collect a tax down here from a picture show of 2 cents if the ticket is 20. If you make that ticket 10 cents you get 1 cent for revenue, and thereby reduce the tax to support the Government in time of war. That has just as much bearing as the decreasing of the rate 10 cents between Springfield and Bloomington. If we have got a military government and all civil law is wiped out, and you are authorizing the President of the United States to govern the United States as he sees fit, I have got no objection to this bill. But I do protest against making the transportation system of the United States, as important as it is to the life of this country, subject to the exercise of the arbitrary will of one individual when it is not necessary and is not a part of his military duties or obligations.

Senator POMERENE. What special reasons, Senator, are there for your thinking that it is probable that the President or the Director

General would interfere with the rate-making? I personally can see no reason why there should be, looking at it from a military standpoint, any reason for the Government's acting in that behalf. If it came to the question of moving cars I could understand why the Government might.

Mr. BRISTOW. As I understand the position of Commissioner Anderson and the Director General, and both, it is that the Director General has authority over these rates. I do not want to quote the Secretary in any way to his disadvantage, of course. The commissioner here knows his views, and if I in any way misstate things from misunderstanding, I will be very glad if you will correct me, because I do not want to do that. He stated that it might be necessary to increase passenger rates in order to discourage passenger travel in the eastern part of the United States; not for the purpose of obtaining revenue, but for the purpose of decreasing travel in order to relieve the congestion that exists, by keeping people at home. He claims, as I understand it now, that he would have a perfect right to fix the rate from Washington to New York at 10 cents a mile under this law if he thought it was in the public interest to do it, or he would have a right to reduce it to 1 cent a mile if he thought it was to the public interest to do it.

Senator CUMMINS. On the same theory he would have the right to increase the rates on some kind of traffic, to say that it could not move at all, in order to give other kinds of traffic a free field to move.

Mr. BRISTOW. I think he claims that. I think he claims he has the right to do any of these things that in his judgment the public interests require.

Senator CUMMINS. We will get in the same position, then, that we are in as to coal now.

Mr. BRISTOW. Gentlemen, are you going to confer upon the President of the United States or any executive officer such power? That is the question. When I speak of the President of the United States I have the greatest respect for him and for the ability of Mr. McAdoo. I am not criticizing the Secretary of the Treasury. I do not care how big he is, he may be the strongest mentality on the earth: it does not change this theory whatever. When you do that, you will simply make this country not a country of law, where the processes of commerce move along channels outlined by statute, but by executive decree, without hearing or without notice.

Senator KELLOGG. I would like to ask you right there on this question before you leave it, is it not a fact that the great commercial centers, the manufacturing centers as well as the agricultural communities, are more interested in the relative reasonableness of rates than they are in the amount of the rates?

Mr. BRISTOW. That is true of large shippers.

Senator KELLOGG. Then is it not possible for one man under this control to so change the relative condition of rates as to absolutely ruin a whole community?

Mr. BRISTOW. Easily.

Senator KELLOGG. Two cents a hundred might deprive an entire city, a commercial center, of a large part of its trade?

Mr. BRISTOW. Yes; a half a cent a hundred will divert many commodities.

Senator KELLOGG. Take it on grain, half a cent a hundred controls the grain usually in the ordinary course of transportation, does it not, very often?

Mr. BRISTOW. Well, that would be a very material fact as between Minneapolis and Kansas City, for instance.

Senator KELLOGG. Yes; you speak of raising the passenger rates in order to prevent the people traveling in one part of the country. Is not that a very dangerous thing to do, as the commercial interests of one part of the country may be dependent upon passenger travel?

Mr. BRISTOW. Of course it is, Senator Kellogg. I do not want the impression to get out that I think Secretary McAdoo would do what he said he had power to do, because I do not believe that he would; but no man ought to have the power to do the damage that could be done.

Senator KELLOGG. Senator, we did not think our coal order would be made a few months ago at this time.

Senator GORE. Have they fixed a price on wheat in Kansas?

Mr. BRISTOW. Yes.

Senator CUMMINS. As far as we are concerned, we are dealing entirely with a question of power and not attempting to determine how the power shall be exercised. We have nothing to do with the manner of its exercise. We must content ourselves with either granting or withholding power.

Senator GORE. Senator Cummins, we can ask him not to do it.

Senator KELLOGG. Does not that result also in bringing every political influence to control the making of rates in favor of certain communities and States and parts of the country?

Mr. BRISTOW. Senator Kellogg, I think that to destroy the State commission and make it purely advisory—to destroy the Interstate Commerce Commission and make it purely advisory—is the most astounding proposition, and that it is fraught with the gravest danger and it is utterly unnecessary.

Senator GORE. Senator Bristow, I infer from your remarks that if the commission were not divided into States it would be well to create local boards to take local situations?

Mr. BRISTOW. I think it ought to be done.

Senator GORE. To subserve local conditions?

Mr. BRISTOW. I think it would have to be done.

Senator KELLOGG. In the construction of additions, extensions, and the operation of trains, is there not grave danger that this power may be abused?

Senator TOWNSEND. What do you mean, the State power?

Senator KELLOGG. No, the power of the Federal Government when all the railroads are under one man—its control and operation.

Mr. BRISTOW. I am not insinuating, and I do not want any one to get the impression that I am insinuating, that Secretary McAdoo would do a thing that he thought was wrong or that he thought would injure the country. I am simply saying there is no occasion yet for us to change the entire form of our government, which this proposes to do. We received, the Kansas commission did, notice from the Union Pacific Railroad some weeks ago that it desired to discontinue certain passenger trains because of military exigencies. As is our practice, we set the hearing at the point most accessible to the

people of the State that were interested in the operation of these trains—at Salina. There were two trains running out over branches from that town. There were about thirty or forty communities that were interested, and they had representatives that came there to be heard, and the representatives of the city of Salina were there to be heard.

The general attorney for the Union Pacific system, Mr. Loomis, of Omaha; the general passenger agent, Mr. Bassenger; the general superintendent, were there, and a number of other local operating officers. The room—a larger one than this—was packed with people who were greatly interested. These gentlemen representing each community rose in their turn and gave the reasons why these trains should not be withdrawn, and the damage it would do to them. After they were through the officers of the company testified as to the necessity for withdrawing these trains. Mr. Loomis, who, as many of you gentlemen know, is a man of high standing, heard the whole case. After the hearing was over and he understood the situation, he announced that the road would not ask the trains to be withdrawn unless it became an absolute military necessity in order for it to fulfill the obligations which the Government imposed upon it; and every representative from the cities and towns that had spoken stated that they would cheerfully abide by any decision that the commission made if it was for the purpose of aiding the Government in the conduct of the war. But as soon as the necessity was over, they wanted the trains restored, and a complete understanding was had, the best of feeling prevailed, and we have received no further request from the Union Pacific officials.

Now, Mr. McAdoo can establish no organization that can deal with questions of that kind. We got a demurrage order, No. 3, I think it is, from Mr. McAdoo the other day. It happened to be one that our State could comply with without serious embarrassment, and we did so. But we in this train case would have gotten an order from the Director General to permit the discontinuance of these trains. He would not have known anything about the reasons why they ought to run, he would have gotten his information from somebody here the same as we got our first information from the officers of the road, and it would have been done to the detriment of the company as well as the communities served.

Gentlemen, when you lodge such power in the hands of any man to determine things of vital concern to local communities, and it may be done without the local communities knowing anything about it until they get the order, you commit the gravest error, in my judgment, in lawmaking.

Senator POINDEXTER. I think every one would necessarily agree with everything that you have said as applied to normal conditions. The problem here, as I understand, grows out of alleged war necessities, and everybody, I presume, thinks that there are some dislocations and changes necessary and incident to the conduct of the war. Where would you lodge that power, and if you lodge it in centralized Federal authority, where would you draw the line between his decisions and the conflicting decisions of the State commissions and the Interstate Commerce Commission?

Mr. BRISTOW. The military branch of the Government, and the military movement is supreme over all. There is no conflict. If the United States Government orders the Union Pacific track to be cleared in order that 40,000 troops may be moved in 24 or 48 hours from Fort Riley, and orders the Union Pacific to furnish the equipment to move them, everything is subordinate to that and everybody is powerless because it is a military movement.

Senator POINDEXTER. Suppose that this central authority would decide that something else which was not so clearly and obviously legitimate in the exercise of the military power should be done, and if local authorities differ about it, what would you do, where would you draw the line?

Mr. BRISTOW. Senator, no such question has ever arisen, and I do not think we ought to change the whole fabric of our laws, because such a condition might somewhere, some time, make temporary embarrassment. I do not think you can point to a single instance where the exercise of any State authority has impeded in the slightest degree any military movement or impeded the military efficiency of the United States. If you can, or anybody can, I would like to know about it, because I would just like to know how it was done and why.

Now, before we change a policy, which has grown up for a generation has become more useful every year and throw us into utter chaos and confusion, let us have some positive fact where this policy has been exercised to the public detriment, cite it, so that we can study the facts and not the theory.

Senator CUMMINS. There is, however, Senator, granting every force to what you have just said about the movement of trains, a vast difference between controlling the movement or operation of the physical property and fixing the rates that general commerce shall pay for transportation.

Mr. BRISTOW. Of course.

Senator GORE. The question of rates may be a financial question, and it may be a commercial question; I do not see how it can be a military question at all.

Mr. BRISTOW. Of course.

Senator CUMMINS. I have not heard any reason given by anybody yet to indicate that we ought to vest that power, the power of fixing rates, in the hands of the Director General of Railroads.

Mr. BRISTOW. But, Senator, this bill does it.

Senator CUMMINS. I know it does it, and I have been insisting it was wrong from the beginning, on that point.

Senator KELLOGG. Senator, if you have finished on that point I would like to ask you a few questions. It is your position that the State commissions exercise a very valuable function in many matters of service in the State, as well as the questions of rates?

Mr. BRISTOW. I think so.

Senator KELLOGG. In fact, is not the greatest amount of the service rendered by commissions all over the country in relation to service at various times—the kind of stations and where they shall be located, the connections, the wires, and the stopping of trains, and innumerable questions as to local service—that is the largest part of the service performed, is it not?

Mr. BRISTOW. It is, especially of State commissions.

Senator KELLOGG. That is what I mean.

Mr. BRISTOW. Yes.

Senator KELLOGG. Is it not almost impossible for the central government to do that?

Mr. BRISTOW. Absolutely impossible.

Senator KELLOGG. Far removed from the people?

Mr. BRISTOW. Absolutely impossible.

Senator KELLOGG. And does it not lead inevitably to trying to do it through political influence, through Members of Congress and Senators who are necessarily in Washington, and the people must reach the departments through them?

Mr. BRISTOW. That might. I can see, Senator, that would be very unfortunate if it did grow up. That is your idea, that the people along these two branch lines out of Salina would have begun to wire their Congressmen and Senators to countermand that order?

Senator KELLOGG. They are sending orders in here by the hundreds to have freight cars returned and to get Mr. McAdoo to do this and that with reference to the local operation which they formerly took up with the State commissions and with the officials of the railroad. I do not say they are getting it done, because I think Mr. McAdoo is a fairly busy man; but it is being done.

Mr. BRISTOW. It would be very unfortunate, of course, to increase that already burdensome and very undesirable method of transacting public business. I was here for a while, and the most disagreeable tasks that I had were to try to interfere with the operation of departments or influence the departments to do things. You only have one side of the question yourself. You are burdened with innumerable details that you can not satisfy—that you can not satisfactorily perform your duties, and I wished there was some way of getting rid of what at that time we had. I would not want it increased if I were going to serve in either House.

Senator KELLOGG. It seems to me there are a good many things that the Director General can do as to service and extensions and betterments and running of trains in the various communities that gives him great power over the commerce of this country. What is your idea about that?

Mr. BRISTOW. I think it is tremendous, gentlemen. I do not want the gentlemen to think that I am over earnest in this, but I believe I have some slight comprehension as to the magnitude of the question of the evils that may follow from ill-advised orders. I know what would happen. It is unthinkable to me.

Senator KELLOGG. Bearing right on that question, if the railroads had been given the power—it may be an academic question, as they have been taken over, but I am not sure it is—to issue an order taking their resources and cars, operating as a unit, routing traffic over lines leased, congested, pool if necessary, but under the direction of a Government official who would see that it was enforced and that the public was protected—why would not that have covered everything that was necessary?

Mr. BRISTOW. Senator, I do not believe that that kind of a system is practical. It will take me a good while to go into that.

Senator KELLOGG. I mean just for war operations.

Mr. BRISTOW. For immediate purposes?

Senator KELLOGG. For immediate purposes; I do not mean permanently.

Senator ROBINSON. As a war measure?

Senator KELLOGG. As a war measure, instead of taking over all the railroads and operating them as a Government property. No, I do not mean that as a permanent thing. I do not think it is practicable.

Mr. BRISTOW. Now, Senator, to give you my honest judgment on that is somewhat difficult, and I am afraid it would bring in somewhat extraneous matters. I do not think this congestion was necessary. I think this congestion could have been avoided if taken in time. I do not believe that if sufficient foresight and wisdom had been exercised we need have been confronted with this calamitous situation.

Senator KELLOGG. I do not know whether you are familiar with it, but the testimony shows that the Government priority orders that were issued by the thousands had a great deal to do with the congestion.

Mr. BRISTOW. Well, I did not want to go into the discussion of that, because it would involve something that I thought was not pertinent; but in order to answer your question, I would have to state that as a preliminary. I am not in favor of the railroads pooling into one system under private ownership all the carrier systems of the country. I think that would be dangerous.

Senator KELLOGG. I was just thinking of the war, as a war measure.

Mr. BRISTOW. As a war measure, whether that would have been better or as effective as this, I do not know.

Senator POINDEXTER. Senator, I did not have the benefit of hearing all your statement, but you did state after I came in that you thought the manner in which the roads were taken over was the worst way it could have been done.

Mr. BRISTOW. I do.

Senator POINDEXTER. In what way do you think they should have been taken over?

Mr. BRISTOW. If the committee will permit, I would like to explain that on another day. It is a little long, and I have some notions that I would like you gentlemen to consider, if you will.

Senator POINDEXTER. I would like to hear that.

Mr. BRISTOW. I desire to say that I would like to submit my views as to what ought to be done. I do not know how useful it will be, but having criticized the bill as I have, I think I ought to make some suggestions of a constructive measure for whatever they are worth.

Senator POINDEXTER. That is the reason I asked you that question. I want to get the benefit of your views, and I would like you to give us some information—I know you have studied the question a good deal—as to the use that can be made of water transportation in meeting the transportation needs of the country and because of the absence of water transportation.

Mr. BRISTOW. I will be very glad to give you my views on that, Senator.

Senator POINDEXTER. When you come back again?

Mr. BRISTOW. Yes; I would be very glad to do that.

Senator POINDEXTER. And another question I would like to ask you about—and I mention it in order that you may reflect upon it a

little—is the waste transportation, a tremendous economic waste in the country from unnecessary back hauls and a system of rates and a system of transportation that encourages them.

Mr. BRISTOW. I will be very glad to answer you.

Senator POMERENE. I understand that it has been arranged to have Secretary McAdoo before the committee at 10 o'clock. Is there anything further?

Mr. BRISTOW. I will be subject to the call of the committee at any time to finish.

Senator POMERENE. I so understand. The committee will stand adjourned until 10 to-morrow.

(Thereupon, at 4.50 o'clock p. m., the committee adjourned until to-morrow, Saturday, January 19, 1918, at 10 o'clock a. m.)

GOVERNMENT CONTROL AND OPERATION OF RAILROADS.

SATURDAY, JANUARY 19, 1918.

COMMITTEE ON INTERSTATE COMMERCE,
UNITED STATES SENATE,
Washington, D. C.

The committee met, pursuant to adjournment, at 10 o'clock a. m. in room No. 410, Senate Office Building, Senator Ellison D. Smith presiding.

The CHAIRMAN. The committee will come to order.

STATEMENT OF HON. WILLIAM G. McADOO, SECRETARY OF THE TREASURY AND DIRECTOR GENERAL OF RAILROADS.

Mr. Secretary, the committee have asked you to come down and appear before them, and we would like to have you address yourself to the question as to whether or not the proclamation of the President under the act of August, 1916, has included in that order all the short line railroads.

Senator CUMMINS. I suppose you mean that, among other things?

The CHAIRMAN. Yes; among other things, are they included?

Secretary McADOO. Mr. Chairman and gentlemen, I think that is a question of fact that has to be determined by an investigation of each particular case. The proclamation in its general terms—and you are familiar with it—takes the possession and control of every system of transportation and the appurtenances thereof. The proclamation of necessity had to be drawn in the language of the statute and it had to be comprehensive in its terms. Naturally the President did not have time to investigate the condition of every railroad in the country before the proclamation was issued.

Senator LA FOLLETTE. The short lines, especially.

Secretary McADOO. The short lines, especially. Hence, it had to be left to investigation after the proclamation was issued as to really what came within the provisions of the proclamation. I think the determining fact must be whether or not, first of all, a line is a system or a part of a system of transportation in the contemplation of the law and the proclamation, and that in turn must be determined by the necessity for the war purpose. We are having these cases presented to us constantly and in each instance they are being investigated and as rapidly as possible decisions are being made.

The CHAIRMAN. The idea of some was to the effect that the proclamation had included all the lines, all the railroad lines, including "terminals, terminal companies, and terminal associations, sleeping and parlor cars, private cars, and private car lines," etc.

The idea was that this included them all, and it was only a question as to what you would actually use in reference to the short lines, as much so as what you would use even in a part of the system.

For instance, it might be that a line was clearly in one of the systems, and it might be for the best interests of the Government not to use that at all. That would be a question for you to decide, but it would still be subject to treatment and compensation.

Now, do the short lines fall into that same category? That is a question, as to whether you will use them or not; but I am not questioning whether they are included in the order.

Secretary McADOO. I am frank to say that if as a result of the investigations which are now in progress any short line is found to be essential to the transportation systems for the purpose of the war and for the purposes for which the proclamation was issued, it would be included of course; but in each instance that must depend upon the facts of the case.

The CHAIRMAN. Would those short lines consider themselves excluded until specifically included by a direct order?

Secretary McADOO. I can not answer, Senator, as to what they think about it. It presents somewhat of an anomalous situation, I confess. Upon the issuance of the proclamation—I think Commissioner Anderson has gone into that probably very fully with the committee already, and I do not want to repeat a useless statement—notice was sent out at my request by the Interstate Commerce Commission to all the transportation systems in the country, and they undoubtedly took the lists of railroads which are on file with the commission and sent the printed notice, as I understood it, to every railroad in the country, big or little.

I assume that the roads may think—some of them or all of them which received that notice—that the Government has taken them over. Perhaps it has—the Government has constructively taken them over. That is a question of law, I think, that has to be considered—a question of law and of fact. The only safe plan, of course, to pursue—and the proclamation, I think, of itself, covers it very fully—is that no printed notice of the plan I describe was necessary; that the proclamation covered all these transportation systems, for the very obvious reason, as I said before, that it was impossible to make a specific description of every line, system, or part of a system that was to be taken, and it provided also that certain lines or certain parts of transportation systems, or transportation systems of themselves, could be taken back if necessary or desirable.

So that I feel that as the operation of the lines was left in the hands of the corporations, their directors and officers, subject to the general supervision or direction or control of the Director General, and as that control has not been disturbed in any matter whatever—they are all being allowed to operate just as they were before—that no injustice would be done or has been done to any line until a determination can be made as to its status under the proclamation.

The CHAIRMAN. You see, the question that confronts the committee is, we are attempting to fix some method of agreement by which these systems that are clearly taken under control can be agreed with, and the short lines falling into a different class will have to be treated, and differently, as is already intimated in the bill. In different sections of the bill there is a provision made that different treatment may be accorded a certain class of roads that fall into a different class from those contemplated in section 1.

The difficulty that confronts the committee is in making provisions for that class. Then, all that fall in that class would naturally, under the law, be the beneficiaries or the subjects of the law.

Senator TOWNSEND. Let me put that in another way, because it is a question here that disturbed me. Do you regard this order as probably having taken over all the railroads until upon investigation you shall exclude certain railroads?

Secretary McADOO. Senator, of course, as to the big systems that are obviously essential, I do not think any question at all arises. I think, as to the small lines, the Government has constructive possession of them, and that we shall have to determine from the facts presented whether they are actually needed or required. It seems to me a very simple and very logical process. We are having inquiries from the short-line railroads, and we are making decisions on these questions every day. Quite a number of them have been notified that they are not taken over. Just as rapidly as we can reach them all—there are quite a number of them—the decisions will be made. I had assumed that the bill made adequate provision for compensation of those short lines that are taken over, and if the bill does not so provide, as far as I am concerned, I do not see any objection; on the contrary, I think a provision ought to be made that in all such cases where the short lines are taken over, a fair basis for determining compensation should be provided.

Senator CUMMINS. Did I understand you correctly to say that some of these smaller lines have already been notified that they were not included?

Senator WATSON. In determining whether or not a small line is to be taken over, or in excluding one that may be constructively taken over, do you take into consideration what the effect of its exclusion will have on the small line, or do you consider only the general transportation problem?

Secretary McADOO. I think we must consider it solely from the standpoint of public necessity, and whether it is required for the uses of the war.

Senator CUMMINS. Mr. Secretary, how is any particular road to ascertain whether it is entitled to get compensation for the use of its property.

Secretary McADOO. I do not understand.

Senator CUMMINS. How is any particular road to ascertain whether from now on, or from the 31st of December on, it is entitled to just compensation for the use of its property? In other words, must that depend upon some subsequent action of the Director General or the President, or is what has already been done equivalent to taking it over so that it is entitled to get compensation?

Secretary McADOO. Of course, it is rather difficult to answer such questions, Senator, categorically, and I only want to state my impressions without undertaking to pass upon the legal questions involved in your inquiries. I should say that any railroad which is in the so-called twilight zone, whose status is not already determined, would have its claim for compensation if as a result even of the constructive possession that I described any injury had been done to it while that constructive possession existed.

Every short-line railroad in this country is operating exactly as it did when the President's proclamation issued. Not one of them has been disturbed, no control has been exercised over them—no actual control. They are going along just as they did before, except as they may themselves voluntarily alter the status. Of course, I do not know what they have done in that respect, but their ordinary business and operations have not been affected in any degree—that is, practically—so far as the Government is concerned.

Senator CUMMINS. Suppose the Government had diverted traffic from some short-line road for a war necessity contrary to the routing of the shipper, would you regard that as a case in which the road was in the control of the Government and that it would be entitled to just compensation?

Secretary McADOO. I think that is a case where they could make their claim, and it would be determined upon its merits, of course.

Senator KELLOGG. You do not mean to say that because all of these short-line railways have had certain divisions of rates with the main lines, and that certain traffic which the Government may see fit to take away from them, and route over its own lines, the Government is going to compensate them for these damages?

Secretary McADOO. No, sir; I do not say it must. I say it is a claim, of course, they could present to the courts.

Senator CUMMINS. Is it a claim that would be recognized?

Secretary McADOO. I think it is a question of fact whether any damages resulted from any action of the Government. I think it is a question of fact as to whether any injury had been done.

Senator KELLOGG. No legal damage has been done them that they would have a cause of action for against anybody.

Secretary McADOO. That is for the court to decide, as I said before.

Senator KELLOGG. That seems to me so perfectly evident that they do not need a court to decide it.

Secretary McADOO. Still, people do present claims when evidently they have no justification for them, and the courts have to determine such cases.

Senator KELLOGG. It is claimed here as to these short-line railroads, that there are about 800 of them in the United States, involving a capitalization of more than a billion dollars; that they serve their local communities, they reach new industries, they are developing new country, and they are dependent upon trunk lines in many cases for equipment and for division of business; that many of them reach points reached also by the trunk lines, and that the Government, having taken over the trunk lines, will naturally route all its freight by one of its own lines and cut them off.

In certain cases, as I recollect it, they say that has already been done and that will bankrupt a large number of these small independent short lines, who heretofore have been dependent upon competitive business with the trunk lines, and that the Government ought to take them all over, as it is going to take over the trunk lines. I would like to have you pass on that.

Secretary McADOO. Of course, Senator, I can not tell what rerouting of traffic is going to be essential to the purposes of the war. I think if such shall be necessary to conserve the interests of the Nation, it ought to be done, and if somebody or some interest gets incidentally

hurt by it he must stand it; we can not compensate for every imagined injury or every anticipated injury from an alteration of conditions. There have been great changes in the country and many readjustments are now in process as a result of the war conditions, and many people are being affected by it; but the Federal Treasury can not reimburse for every injury, real or imaginary.

Senator TOWNSEND. Or indirect?

Secretary McADOO. Or indirect injuries that people may suffer as a consequence of war. I may say this: I do not think the Government should draft a needless railroad into the service of the country, which imposes a burden upon the Treasury of the United States, any more than it should draft a crippled individual into the ranks of the Army when he can not perform service. The Treasury of the United States has all it can carry, and I think we should all be culpable if we took over any property not needed for war purposes, which would impose an additional charge upon the Treasury or an additional burden upon the public. I think the incidental losses which individuals or corporations may suffer as a result of this war must be suffered, and for my own part I do not contemplate, as far as I can see the problem after three weeks of strenuous time here—and I confess I do not know all about it and think it will take me a much longer time than three weeks to learn—but from that experience I confess I can not see why there should be such disturbance about the status of the business of the short line railroads. Naturally, every transportation agency in the country, whether a part of a system which the Government controls or nor, is going to be given as fair an opportunity to exist as the conditions permit. There is no intention or purpose on my part, so far as intentions and purposes go, to do any injustice to the short-line railroads. I think they should be helped, so far as it is possible to help them, consistent with the supreme need of the nation. That is the determining factor, and I do not think any of us have a right to view it from any other angle.

The CHAIRMAN. You see, Mr. Secretary, one reason why this question is more acute now than it would be otherwise is that we have suddenly and violently gone from a competitive system, encouraged by all previous legislation, to a unified and noncompetitive system, and these small roads have been recognized as one of the competitive factors, are doing a common-carrier business, and so reorganized by the Interstate Commerce Commission, and they interchange cars and interchange roadbeds.

Secretary McADOO. That has not been interfered with. As a matter of fact, Senator, it seems to me they are hollering before they are hit. When they are hit, I think if it is the result of any direct act of the Government for which any liability should result or does result—why, the remedies are provided. They have their opportunity to present their claims and to have them adjudicated. If the bill does not so provide, it ought to do so.

The CHAIRMAN. I want to get clear in my mind this: As I mentioned a moment ago you could take any part of the system and use it, when the whole system is included, to the exclusion of a part which might be a branch line of a system; but the compensation that we are providing now for that system in reference to its branch line com-

pensates it just as though the branch line was used. It makes no difference to them whether you use a part of the system, all of the system, or none of the system, they will get their compensation.

Now, do you consider these short lines as a part of the continental system, as you consider a branch line a part of an individual system?

Secretary McADOO. I should consider them so if they are essential as a part of the war necessity, and the facts must determine. As I understand this bill, we are not attempting to fix the compensation of anybody; we are simply attempting to determine a rule by which every interest affected may have its compensation determined in the light of the facts, either in court or by an agreement.

Senator CUMMINS. That is stating it a little too broadly, from my point of view, Mr. Secretary. This bill does not make provision for compensation to any railroad company unless the Government has taken possession and assumed control of its road.

Secretary McADOO. I meant that, of course, Senator.

Senator CUMMINS. And our difficulty, I take it, is with regard to the possession and control, and what constitutes possession and control, of any particular road. If we desire to make compensation to those companies whose business is affected but whose control over the physical property is in no wise interfered with, we will have to go much farther than we have gone in this bill.

Secretary McADOO. I have assumed, gentlemen, that this bill would not undertake to pass upon the question, and it does not—I assume that you have no such purpose in your mind—as to what is or is not taken over by the Government under this proclamation. That must be determined by an investigation.

My general view is this—and I am not attempting to speak from a legal standpoint as much as from the standpoint of common sense and fact—my view is that it is the duty of the Director General as quickly and as expeditiously as possible to determine by an investigation of the facts in each particular case what railroads or systems of railroads or parts of railroads the Government needs for the purpose of this proclamation, and that the carriers shall be notified in each instance whether or not they are taken over. That is in process and has been in process almost from the day the proclamation was issued.

As to the railroads which the Government does take over, compensation is to be provided under the terms of the law that you pass. As to whether or not somebody's interests outside of the class I have described is affected, and as to whether if affected the Government has incurred a liability, is something, it seems to me, for the courts to determine. I can not determine that question, and I do not think this committee can determine it unless it should simply impose an arbitrary requirement on the President to take over every railroad and to compensate them, whether they are needed or not.

Senator UNDERWOOD. Mr. Secretary, let me ask you a question. I do not think it is a legal question that is involved. You stated, I think, the difficulty with these short-line railroads, that you think they will not be taken over and may not be taken over, is an apprehension that under the Government management of the main systems business will be diverted from their roads which they now have. Under the operation of the Government system would there be any

inclination on the part of the Government management to divert business from the lines of the shorter railroads that are not taken over, except where the war necessity requires it?

Secretary McAdoo. Except where the war necessity and the public interest demanded it, it is obvious that it ought not to be done.

Senator UNDERWOOD. The Government would be inclined to see that their ordinary business was given to them?

Secretary McAdoo. Of course. As far as that is possible and is compatible with the public interest, Senator, it is going to be done. There is no disposition to rip anybody up the back; there is every desire to see that the short roads shall have as fair and just treatment as possible in the circumstances.

Senator UNDERWOOD. And they would be given the same opportunity to get cars for the transportation of freight going over the short line railroads not included as they would as handled by the railroads before they were taken over?

Secretary McAdoo. Of course, I say so far as it is compatible with the public interest for the determining purposes of the war. I repeat that my conception of this situation is that all these lines ought to be kept going as far as it is possible to do it, whether or not they are taken over by the Government. I mean those that are excluded from Government control. And it is my purpose to see that they are treated with the utmost possible fairness and consideration. Judge Payne called my attention to one particular case where a short line railroad was complaining that it was not receiving fair treatment, and the matter was immediately corrected. The corporations were advised that such discriminations, unless necessary, must not be continued.

Senator GORE. I can give you a case exactly in point, Mr. Secretary, and one in which I feel some interest. The Rock Island runs from Memphis to Oklahoma City, and another line, the Iron Mountain, runs from Memphis to Little Rock, but does not go to Oklahoma City. It gets into Oklahoma City over the Fort Smith & Western, and makes a longer route. The Rock Island is the short road, a new road, one which was financially embarrassed, but last year its earnings were three or four fold over its average years ago. That is due to the increased traffic they get from this arrangement with the Iron Mountain. If the traffic were diverted and carried over the shorter line of the Rock Island it would mean a considerable loss to the Fort Smith & Western.

Secretary McAdoo. I should say in a case of that kind, Senator, that if it were necessary to move troops or to move supplies that were essential to the armies, or essential for military purposes, to divert that traffic from either of those lines to some other line, if it existed, why obviously the supreme duty would be to divert it.

Senator GORE. There is no doubt on earth about that.

Secretary McAdoo. I think that we can not legislate with respect to the fears or the anticipated difficulties of the situation. It seems to me we must steer and hold a very straight course to the supreme purpose and need here.

Senator GORE. There could not be any controversy about that, Mr. Secretary; the necessity would dominate over all other considerations. But the point was that it would entail a great deal of loss to this road.

Secretary McADOO. Yes.

Senator GORE. And if it was not taken over it should receive compensation?

Secretary McADOO. If a man has four or five sons, or, say one son in the Army, and he is killed in battle, that man suffers a loss too, but that is part of the war sacrifice and it can not be avoided. We must face those things.

Senator GORE. We have undertaken to give some remuneration to the family of the deceased.

Secretary McADOO. That is inconsequential as compared with the sacrifice.

Senator GORE. There is no doubt about that.

Secretary McADOO. And this is inconsequential as compared with any war purpose.

Senator GORE. The question is whether the suffering of the loss is justified. You can not keep a man from being killed if he is put into battle and is killed.

Secretary McADOO. My point is this, Senator: Every effort will be made and should be made to prevent unnecessary loss to short line railroads or any other railroads while under Government control. I think that it is obviously the duty of all of us to try to mitigate losses and avoid unnecessary sacrifices; but the point I want to impress is if such things are inherent in the situation and can not be avoided, why the Government can not undertake to compensate for all of those things, whether losses have occurred to railroads or individuals or firms or corporations engaged in industry. You have to face those situations.

The CHAIRMAN. Mr. Secretary, let me ask a question to clarify this now in my own mind. Under your interpretation of the proclamation, the system or systems of roads in the proclamation have been included. The short lines have not been included and will only be included as specifically ordered?

Secretary McADOO. As decisions are reached, Senator, it will be determined whether any of those roads is included in the President's proclamation.

The CHAIRMAN. But that the large systems have been included?

Secretary McADOO. The large systems are obviously included already, because you can not avoid taking them and they are clearly systems of transportation, and so interpreted under the proclamation and under the law justifying the proclamation.

Senator ROBINSON. Have you worked out yet, and do you care to state, Mr. Director General, the primary principles upon which you determine whether a short-line road is required in the present emergency by the Government?

Secretary McADOO. I do not think there is any one determining principle except the one as to whether or not in our view it is required for the war purpose and will be useful or necessary in carrying forward the operations of the war in conjunction with the systems of transportation already taken over. I think the facts in each case have to determine that.

Senator ROBINSON. You determine that according to the facts as they now exist, or probably will exist in the early future. If the condition changes which makes it necessary to use a road that you do not need to use now, you will take that hereafter?

Secretary McADOO. Exactly, and I may state the same question has arisen here about the canals. There are a number of canals in the country that may be utilized with very great advantage, and they are not yet taken over by the President's proclamation; but if it should develop as we go along that canals are required action will be taken with respect to them. The bill also, as you see, provides that inland waterways may be used, and out of the fund which is provided here expenditures may be made for the necessary equipment to make those inland waterways serviceable. In each of those cases you must determine after some study of the problem as to which ought to be developed and used, and the same rule applies, I think, to all the railroads.

Senator POMERENE. Mr. Secretary, to follow your thought as to the control which you intend to exercise a little further, I want to ask your view for the purpose of developing the matter a little further. There is a fund provided here to enable the Government to finance those roads that may have maturing obligations such as a bonded debt, and so forth, or current bills maturing. Of course, I assume that you expect to give such financial assistance as may be necessary to those lines which are in fact taken over, if necessary?

Secretary McADOO. If necessary.

Senator POMERENE. Yes, surely. But what will be your policy with respect to those roads that may be embarrassed by the fact that the Government has assumed control of the general railway systems but which roads have not been taken over, or rather, have been excluded from Government control?

Secretary McADOO. Clearly we should not have any power to do anything with them under this bill.

Senator POMERENE. That is, you have no policy looking to the financing of such roads as that?

Secretary McADOO. I do not see that we could possibly do anything with respect to such property, Senator.

Senator POMERENE. Well, that is my view about it. I wanted you to make clear your own position.

Secretary McADOO. Any more than we should with industries or individuals affected by the war. Let me say this to illustrate my point: Nearly every investment and banking house in the United States which was engaged in the selling of securities for profit has practically found its business destroyed. The Government's financial operations have necessitated the absorption practically of all of the money that those investment houses used to resort to for the sale of securities of corporations. I mean their business is practically gone for the moment, or for the present. We can not, of course, compensate for those losses. The Federal Treasury could not take care of the infinite number of demands that would be made upon it. Somebody has to make sacrifices besides the men who go out and die on the battle field.

Senator POMERENE. There can not be any question that the road not taken over, unless it has a legal contract for certain traffic with another road, has got no case for damages against the Government, whether its business is entirely taken away or not, can it?

Secretary McADOO. I think you are right, Senator, although I am not undertaking to render judgment on a legal proposition of that kind. As a one-horse lawyer, I agree with you.

The CHAIRMAN. Mr. Secretary, I think the committee pretty thoroughly understands your interpretation of this. Are there any other matters that you would like to discuss?

Secretary McADOO. I do not think I have anything in particular, gentlemen, that I should like to say to you about the bill. I understand it has been very exhaustively considered here and I do not want to thrash over old straw. I should be very glad, however, if the committee would allow me to say a few things to them in executive session about one feature of this bill that I should prefer to discuss with the committee in such session.

Senator ROBINSON. Before that is done, Mr. Director General, I would be very glad to have you state some of the reasons which in your opinion justify and make necessary Federal control, if you care to go into that.

Secretary McADOO. I do not think I can add anything now to the discussion, Senator. I think it was obvious that Federal control would have to be asserted over the transportation systems in order to get a more efficient operation and to get increased facilities for the demands of the war, primarily the military necessity. I think that under the competitive system of management it was impossible to get the coordination of facilities which is essential at this time. The President's proclamation, as well as his address to Congress, and Mr. Anderson's testimony before the committee, which I have read in part, stated the case very fully.

Senator ROBINSON. You are convinced, then, that it was necessary in a proper and efficient conduct of the war?

Secretary McADOO. I think it was essential not only for that, but also to settle a very serious situation which was affecting the whole basis of credit in the country. That was incidental to the other. It was just as well to settle both of those issues while we had the opportunity to do it. I think the President stated the case admirably in his address to the Congress, and also in his proclamation.

Senator ROBINSON. I think so, too, but you are bound to know that the question has been the subject matter of a great deal of discussion, even before this committee, and it has been very strongly opposed by many.

The CHAIRMAN. Mr. Secretary, can you state specifically just how it was affecting the basis of credit throughout the country?

Secretary McADOO. There was something like \$11,000,000,000. for instance, of railroad bonds and obligations held not only by individuals but in very large part by banks and trust companies and fiduciary institutions in the country. They are an essential part of our financial structure, the basis of an immense amount of credit in the country upon which business is being done, and the value of those securities had shrunk very much under the uncertainties of the situation. The discussions about the railroad rates and the inability of the railroads to earn what they thought was necessary to enable them to make improvements on their property, and the growing difficulties of selling securities for the purpose of making the necessary additions to equipment and improvements required to enable them to meet the unusual demands thrown upon them, not only by the activities of the war, but by the ordinary growth of the country

had finally developed a situation where something had to be done to stabilize or to clarify the railroad position in the country.

The financial operations of the Government, those growing out of the war, its direct operations, are of course affected by the condition of the markets of the country, and if such a large part of the credit basis of the country as these securities offered was in doubt, or occupied an anomalous position, shrinking in value all the time, with shrinkage in value of the assets of the savings banks and trust companies and banks, as well as in the credit power of firms, individuals, and corporations which had a large part of their assets invested in such securities, and which had to use them as the basis of credit which they had to get from banks, a very serious situation was presented to the country.

The CHAIRMAN. Growing out of the Government's demand on the money market.

Secretary McADOO. That, I say, in connection with the condition of the railroads generally. Some of them had broken down very badly under the strain of the increased burden that had been imposed on them, and they were finding it difficult to finance their necessities for additional equipment and betterments and improvements, and so the whole situation was one which had to be dealt with.

The CHAIRMAN. Mr. Secretary, may I ask you this question, so as to keep this clearly in line with what you are now saying? Is it your opinion that this congestion grew out of a lack of facilities rather than out of a lack of the proper use and the full use of the facilities that we now have?

Secretary McADOO. It grew out of both. It grew out of insufficient facilities, as well as an inability under separate managements to coordinate thoroughly, and effectively use the combined facilities of the railroads.

The CHAIRMAN. Under the restrictive laws that we had?

Secretary McADOO. Yes; and under the autonomous managements of the different railroads. Of course every railroad manager, of necessity, felt the obligation to the owners of the property to get all the business he could. That was his duty. The roads, quite naturally, were taking all the traffic they could carry, and more than they could carry, with resulting congestion.

Under the unified control, it is possible to make common use of all tracks and facilities and equipment. I may illustrate it at once by saying to you that when I took charge of the railroads I found on the eastern lines a terrible congestion of traffic, which has not yet been relieved, and that was due not only to the fact that they had insufficient facilities of all kinds; that is, on the most congested systems, but they had an insufficient amount of motive power. The railroad equipment of the country, the cars of the country, might be sufficient for immediate needs if we could only get the use of them, but as long as a large percentage of them are used for warehouse purposes and kept standing in terminals idle, the car equipment of the country is not sufficient for the need.

Let us take the question of motive power alone. Upon an investigation, I found that the railroad companies throughout the country had placed orders with locomotive builders for locomotives to be delivered in January, February, and March. The aggregate of those

orders, I think is, roughly speaking, 700 locomotives. Under private management those locomotives as delivered by the builders would have been sent to the different railroads throughout the country which had ordered them. I issued an order immediately upon discovering the situation that all of those locomotives, no matter for what company's account they were constructed, should be delivered to the order of the Director General and be sent as rapidly as delivered to those railroads which were most in need of motive power. That would not have been possible under private management, because they probably could not have agreed among themselves to any such step. Now we can distribute those locomotives where they are most needed as rapidly as they come out of the shops.

Senator ROBINSON. When congestion is threatened, the tendency is to increase it by each line holding on to all cars it can get, even though it does not need them.

Secretary McADOO. I beg your pardon?

Senator ROBINSON. Is it not the tendency to hold on to all facilities a line can get, even though they are not immediately needed, when there is a growing congestion, under private management?

Secretary McADOO. I think that was the natural tendency, because no railroad manager would care to admit that he could not take all that was coming, and he would be anxious to get all the business he could.

Senator ROBINSON. And he would want to have the equipment necessary to handle it when it came?

Secretary McADOO. Yes.

Senator POINDEXTER. What are the principal things you have been able to do, Mr. Secretary, since you assumed control to relieve the situation, in addition to this matter of locomotives that you have spoken about?

Secretary McADOO. A great many things have been done, Senator. We have prevented the continued delivery of cars, as far as it was practical to do so, to already overcongested lines. We have forced rerouting of freight over lines—the trunk lines—in such a way that we have gotten a better distribution of the traffic.

Let us take the case between Chicago and New York. The through traffic between Chicago and New York—freight traffic—is being sent over whichever line can handle it quickest, regardless of the bill of lading, in which the shipper ordinarily prescribes the route. The shipper is not concerned as to what line it is carried over between Chicago and New York, but he is concerned about the delivery at New York. We can handle that because we have the common use of facilities. That is one of the first things that was put into effect.

I do not know whether the committee has had presented to it the first order issued. Is that already in the record?

Senator WATSON. Order No. 1?

Secretary McADOO. Order No. 1.

Senator WATSON. Yes, that is in the record.

Senator POINDEXTER. Has there been some substantial clearing up of the situation due to the rerouting of freight over the most convenient lines?

Secretary McADOO. Through the eastern district, Senator. I do not think there has been very much improvement as yet. The railroad

managers, all of whom I wish to repeat were left in control of their properties, except they were directed to run them and operate them on the new plan, have been given, in addition to all the powers and authority that they previously possessed, all the power and authority of the Federal Government to support them in carrying out the plan for more expeditious movement of traffic on these lines that were congested, terribly blocked, when the Government took possession. I do not offer this as an excuse, but merely as a statement of fact, which they are urging upon me as a reason why they have not been able to do more under the more favorable conditions, namely, that since the 28th of December the weather has been, of course, of the most extraordinary character. We have had successive blizzards, with temperatures ranging from zero to 20 degrees below zero; they tell me, everything has been frozen up, and it has been almost impossible to dig out these facilities before another one struck them, and that has, I am free to confess, seriously hampered railroad operations for the past three weeks. Not only that, but in the East here, the harbor at Baltimore was frozen tight, which of course prevented all shipments of coal from Baltimore by water, for the time. With the assistance of the Secretary of the Navy, we succeeded in breaking that up a few days ago. We are not equipped with ice breakers in this part of the country. It is not my business to open up channels to harbors and free them from ice. The railroads do not run those things. I have, upon appeal, exerted myself to the utmost limit in conjunction with railroad managers everywhere, and in conjunction with the Secretary of the Navy, to break up the ice in New York Harbor, in the Hudson River, and at other places where it was possible to route freight.

To let you see how serious these very low temperatures are, especially when they get as far as Norfolk: Ordinarily the movement of coal at that point is not interfered with in the winter. The Norfolk & Western Railroad and the Virginian Railway and the Chesapeake & Ohio never, as a rule, are seriously hurt by winter weather. They have had so much floating ice down there this time that they have not been able to get the ships into the docks. The coaling of them at the coal piers has been seriously hampered, and even when they could get up to the docks the coal has been frozen tight in the cars and it has been impossible to dump them. Those are real problems, gentlemen, which human skill and ability can not overcome. The only thing that can overcome that is a thaw. Those are difficulties that railroad managers have been laboring under for the last three weeks to an unusual degree.

Senator WARSON. Did not that same condition exist, Mr. Secretary, for two months before that time, cold weather and heavy snows?

Secretary McADOO. This was the 28th of December, I am speaking of. Just before the 28th of December there was a blizzard which had already put the railroads in very bad shape in some parts of the country. Since that date, there was a blizzard, and those railroads which already were suffering from serious congestion, like the Pennsylvania, the Baltimore & Ohio, the Reading, the New York, New Haven & Hartford, and other lines which I need not mention, found themselves of course burdened with a new difficulty.

Senator WATSON. Was not a part of that congestion due to the fact that we lacked shipping facilities to handle this traffic when it got to New York and other places, there being no storage facilities, and as a matter of fact when it got over there they had to use the cars for storage purposes?

Secretary McADOO. Of course, Senator, as far as export freight is concerned, the shipping difficulties have added to the troubles.

Senator WATSON. Yes.

Secretary McADOO. But that is not the only part of it; there are many causes.

Senator WATSON. Certainly.

Secretary McADOO. One of the serious causes is the fact that consignees have held freight cars for almost interminable periods, when they should have unloaded them promptly. After they were placed they should have unloaded them promptly and released the cars for service. That condition has been due to the fact that the demurrage charges have been very low and they found it cheaper to use freight cars for storage than to put their stuff in warehouses. I have tried to correct that.

Senator WATSON. You have increased the demurrage charges?

Secretary McADOO. I have; yes.

Senator WATSON. How much?

Secretary McADOO. They have two days' free service and then a progressive scale of demurrage begins, I think at \$3 a day, on the third day. Two days free, and on the third day it is \$3 and runs up to \$10 a day on the eighth day, and \$10 per day after that. It is going to have a helpful influence, if we can release freight cars and keep them moving. It is necessary to get new motive power as well as to repair existing motive power, which is in very bad shape on some of the roads, and there is a shortage of labor also. The draft has hit the railroad labor to some extent and a great many railroad men have volunteered. There is a general condition which ramifies the situation and must be overcome. I think it can be very largely remedied in a short time. Railroad managers themselves concede that with the steadying influence of the Federal Government and the power it can exert in enforcing coordination and common use of all of these facilities, both at terminals and along the lines, that we ought to get a very much more efficient operation of the railroads of the country. It can not be brought about, I may say, gentlemen, in a day or a week, or in two or three weeks, but it can be brought about eventually.

Senator POINDEXTER. The taking over by the Government did not have any effect on the weather. You still have that to contend with.

Secretary McADOO. I wish it had affected the weather, Senator, favorably. It seems to have affected it unfavorably.

The CHAIRMAN. Mr. Secretary, will this bill enable you, in relation to general traffic, to utilize those ports that are not subject to this condition of freezing up, making it impossible for you to handle the freight?

Secretary McADOO. It will be possible, Senator, to reroute freight, and a good deal of that is being done already. Such of it as is possible is being sent to Gulf ports. That, in turn, is determined by the ability to get ships there. Up to the present time, because of the

shorter ocean voyage, and for other reasons that have been prevailing, most of the ships have been sent to New York. That has put an undue strain upon the port of New York that should not have been put there, I think. In other words, it should have been distributed better. That is one reason why the Government control will be an advantage. I think that we can force a distribution of railroad traffic that will compel the sending of these ships to other ports where they can be turned quickly and gotten out of the way. The weather that we have had for the last four weeks and the freezing up of the harbors has made it very difficult to get bunker coal to New York and there has been an accumulation of tonnage there, which, in turn, has been unable to move. That has left all the freight for export untouched.

Senator WATSON. Mr. McAdoo, are the railroads to blame because the ships choose to load and unload at New York Harbor?

Secretary McADOO. No, I do not think they are wholly to blame. I think under the competitive system of course the lines terminating at the port of New York wanted to get all the business to New York that they could.

Senator WATSON. Precisely.

Secretary McADOO. And very naturally they wanted to carry it where they would get the business. Under the existing system I have already set in motion the necessary studies to determine how far it is possible to distribute freight among the great ports of the country more equitably with reference to their facilities, the facilities of the different ports, and that means of course that we must get the cooperation of those who control the ships, the Allied powers as well as the Shipping Board here. I think that cooperation can be had without any difficulty.

Senator WATSON. Has not the Railway War Board already taken steps to divert traffic from the north down to some of the southern ports?

Secretary McADOO. I am not so sure about that; perhaps they have.

Senator WATSON. I think they have, as a matter of fact. That has been testified to here.

Secretary McADOO. I think that may have been done.

Senator WATSON. Let me ask you this general question: Were you familiar with the operation of the railroads under the management of the Railway War Board?

Secretary McADOO. To some extent only. They were trying by agreement to get what I think they could not get in full measure. I have no doubt, Senator, that they were doing some good work.

Senator WATSON. They have testified here, those of them that we have examined, that there was no single instance in which an order issued by them was violated or in which the company to whom it was directed failed to carry it out.

Secretary McADOO. That may be; I do not doubt it.

Senator WATSON. If that be true, I was wondering just how far the antipooling law in your judgment affected their ability to completely coordinate, and whether or not that was the main advantage in having complete Governmental control.

Secretary McADOO. You see it is not a question of the antipooling law only, Senator.

Senator WATSON. Not with one Director General it is not. You neither can combine with yourself or pool against yourself.

Secretary McADOO. No.

Senator WATSON. But it was not a question with them, and were they not, at the time they were attempting to do this, receiving letters from the Attorney General as to what they were doing and how far they could go, and so forth?

Secretary McADOO. I can not answer that because I do not know anything about it.

Senator KELLOGG. The main congestion, as I understand it, was at Pittsburgh and east, on the Pennsylvania, the Baltimore & Ohio. In the territory between there and New York, and along the New Haven road.

Secretary McADOO. I think the most acute congestion and the principal congestion, Senator, is in the territory east of Chicago and north of the Potomac and Ohio Rivers.

Senator KELLOGG. The principal reason for that congestion was that between 1916 and 1917, both inclusive, the increase of freight hauled 1 mile in this country was 135,000,000,000 tons, was it not?

Secretary McADOO. I am not familiar with the figures.

Senator KELLOGG. That was the increase of freight hauled 1 mile.

Secretary McADOO. There has been a large increase.

Senator KELLOGG. The most enormous increase that has ever occurred in any three-year period in the country, was it not?

Secretary McADOO. I can not testify as to those figures because I have not examined them.

Senator KELLOGG. In addition to that they had to haul in the last six months over 1,200,000 soldiers from various places, an enormous increase of passenger traffic, and an increase of mail and package traffic, was there not?

Secretary McADOO. There has been a large increase in every direction.

Senator KELLOGG. And very little increase in equipment, because it could not be had.

Secretary McADOO. I can not say that, because I do not know whether it could have been had or not.

Senator KELLOGG. Do you not know that the locomotive factories were building locomotives that were being sent to Russia and to France, and the orders that the railroad companies had for locomotives were diverted to Russia and France?

Secretary McADOO. I understand that some of them were, Senator. I am not prepared to say. I can easily investigate that.

Senator KELLOGG. And that it was impossible to get material for cars and get them manufactured because the Government was taking the steel.

Secretary McADOO. I can not say as to that.

Senator KELLOGG. That appears here.

Secretary McADOO. I know. I do not question the accuracy of the statements, but I am not prepared to testify on that myself.

Senator KELLOGG. Do you know that the railroads handled during the first six months of the war, from April to September, 20 per cent more freight tonnage than they handled in the corresponding six months of last year?

Secretary McADOO. I know that is stated, but I say I am not prepared to confirm these figures because I have not investigated them.

Senator KELLOGG. It appears here that when they wished locomotives from the western lines, they simply made an order on the western lines to furnish them 100 locomotives, and they were furnished within 24 hours. Do you know of a single instance of refusal to supply locomotives demanded to be apportioned between the railroads?

Secretary McADOO. All this occurred before I took charge, Senator, and I am not familiar with the facts.

Senator KELLOGG. You say Government operation has very much benefited the situation. I want to know in what it has benefited the situation.

The CHAIRMAN. Senator Kellogg, let me ask you a question?

Secretary McADOO. I have not stated that it has benefited it, Senator, as yet.

The CHAIRMAN. Does not that increased tonnage show, to use Senator Kellogg's illustration, that there is a funneling at certain places, while other railroad facilities throughout the country which are under Government control might have been utilized to the fullest extent, but were not utilized. This increase shows the reason of the congestion, and although it is an increase in traffic it has worked a hardship rather than a benefit.

Senator KELLOGG. Let us see about that. The traffic, Mr. Secretary, which was congested in the port of New York, and, we will say, Baltimore and Norfolk, but principally in the port of New York, was because the shippers and the Government routed the traffic that way. The railroads had nothing to do with routing the traffic, did they?

Secretary McADOO. I think they had very much to do with it. They have their traffic agents all over the United States, and have had, as a part of this old system of soliciting traffic for their lines, and of course they were seeking to get all the traffic they could, ordinarily, as a part of the old system.

Senator KELLOGG. Do you not know that the War Board during the month before the Government took over the railroads, were discouraging traffic over the Pennsylvania and the Baltimore and Ohio?

Secretary McADOO. I understand that they were.

Senator KELLOGG. And that the Government insisted on shipping to New York and to these ports?

Secretary McADOO. I am not prepared to testify to those conditions because I have not had occasion to examine them.

Senator KELLOGG. Is it not a fact that another thing that largely congested the roads was the issuing of many thousands of priority orders by quartermasters' clerks and everybody else in the department?

Secretary McADOO. I can not answer that.

Senator KELLOGG. Do you know anything about that?

Secretary McADOO. I am told that that is the fact.

Senator KELLOGG. Is it not a fact that when you took hold you stopped the whole business?

Secretary McADOO. I just cut out all priority orders. I did not know what they were except that I heard that there were a great

many and that they were hampering traffic. I believed if they existed that they were hampering traffic.

The CHAIRMAN. You did that so that you might have a clean slate to write on?

Secretary McADOO. Yes.

Senator KELLOGG. The power existed before to cut them all out. did it not?

Secretary McADOO. Congress, as I understand it, passed laws giving the power to establish priorities.

Senator KELLOGG. But to one man only.

Secretary McADOO. Yes.

Senator KELLOGG. And that was the President.

Secretary McADOO. Those priorities were being determined by Judge Lovett who was appointed by the President for that purpose. He had issued some general priority orders. I do not know to what extent the individual representatives of the War and Navy Departments requested priority shipments, but I felt from my general knowledge of railroading, and I do not profess to know a great deal about it, that the issuance of priority orders, or the attempt from any office to determine what shipment must proceed first must have a very demoralizing influence upon the general movement of traffic. I may say, gentlemen, that these conditions, however, are not due to any one cause. They are due to many causes. I, myself, am convinced that we can not correct them except under a coordinated use of all these facilities, without regard to private ownerships. I think that will be increasingly manifested as that control begins to assert itself more effectively. It takes times to do that, of course.

I may say this, from the brief examination I have made of some of the statistics of railroad operation, and perhaps you gentlemen may sympathize with me or perhaps excuse me for not knowing more about some of the details because I have been somewhat busy with the pressing and active problems existing when I took charge of the railroads, the most acute problem being to try to get coal to the different parts of the country so the people would not freeze and so that industries might be carried forward as much as possible, as well as other things. These, I think, are rather conspicuous: In 1916, and perhaps 1917 and 1915, the amount expended by the railroads for improvements and betterments, or capital additions, was much less than in preceding years.

I am not prepared to say why that was, with increasing traffic coming along. It may be due to the fact, as you intimate, Senator, that it was difficult to get material and supplies, and I am not criticising anybody for not have ordered a larger amount of supplies, or made larger capital expenditures in those two years, 1916 and 1917. I am only stating what appears on the face of it to be a fact.

I have no doubt that the railroads found themselves confronted with very greatly increased cost of materials and supplies, and quite naturally they hesitated to go forward and place orders when it was going to cost so much more than it would under normal times to buy locomotives and cars, and perhaps also the high cost of other materials may have deterred them from undertaking as large improvements as they had undertaken in previous years. The fact that they did not, plus the further fact that the industries of the

country have been tremendously stimulated during these past three years, when our export trade has grown enormously, and our domestic demand has also grown, has thrown a tremendous new burden upon the railroads. It is very obvious that with less expenditures upon improvements and facilities, and with increased business thrown upon them, they have found themselves in a very awkward position, especially in this part of the country where such a great part of the heavy freight originates and has to be carried.

The CHAIRMAN. Mr. Secretary, what is your opinion as to the effect an early determination of this bill will have on the general situation in helping you to solve the problem in mobilizing these forces?

Secretary McAdoo. I think it will have an extremely helpful effect. In the first place, the railroads under Government control have to face a question of improvements for the coming year, or rather for this year, not only tracks and terminals, but equipment. As to those new things, the Government must determine what is necessary to be done. We can not incur obligations until we have an appropriation which will enable us to go forward. The appropriation is carried in this bill. This is the time of the year when this sort of thing should be determined, and all preparations should be made for carrying forward the work. It would be a very great advantage to have this question settled promptly. I think the sooner we get it out of the way the better.

The CHAIRMAN. Mr. Secretary, it has been said here that perhaps you would be better prepared to tell the committee just the purpose of that proposed appropriation of \$500,000,000 than any other. Would you care at this time to state just what you will use that for?

Secretary McAdoo. Yes; certainly. In the first place, gentlemen, we must have a fund here which can be used to make good any deficiency in any guaranty that the Congress may authorize the President to make. My own hope is that we shall not have to make good any deficiency. I think it may be possible to practice very considerable economy in many directions in the operation of the railroads under one control. Of course, I can only offer an expectation there, and that is based upon some general knowledge I have of practices under private management which were inherent in the old system of autonomous management of a great many independent railroad lines, and also upon what railroad men of large operating experience tell me can be done in the way of operating railroads more advantageously under a unified control. So I hope that very large economies may be practiced. How far they will be offset by increased cost of material and increased cost of labor I do not know, but perhaps one hand will wash the other. If it does and you maintain the present status, perhaps the Government would not have to meet any deficiency against guaranties it may give. In any case, I hope that the deficiency will be inconsiderable, and I hope as well that we may have a surplus. However, time must tell. We must have a fund out of which such deficiencies can be paid if they arise.

Certainly we must have a fund out of which new additions and improvements that may be necessary to make the railroads more efficient for the purpose of the war can be made, and equipment which

it is necessary for these lines to have; and then, in the case of railroads which need some assistance in the way of financing, we must be prepared to offer that assistance. I mean those that are under Government control. My own feeling is that the \$500,000,000 is about the smallest amount that we could begin with. I think we should have at least that much.

I should say that this fund is adequate for the general purpose as things stand now. If anything develops to make it necessary to call for additional appropriations, of course the matter will be presented to the Congress.

THE CHAIRMAN. The main purpose of this appropriation, however, is to take care of early maturing obligations?

Secretary McAdoo. No, sir. I hope the companies themselves can take care of the maturing obligations of the railroads, because with this guaranty and their status determined while they are under Federal control, there is no question at all about their ability to meet their interest charges. I hope that most of the companies can finance their own maturing obligations.

There are only \$222,000,000 of maturing railroad obligations, according to a statement I have here, in the year 1918. Of these, \$57,000 represents equipment trusts, and therefore I should say that as to a large part of these obligations, once the status of the railroads is determined, and the guaranty is made effective, I should hope that the various companies could take care of them by refunding them or extending them for a short time so that the Government would not have to finance them. However, we ought to be prepared to help them and their credit if they can not do it in a normal way.

In 1919 they have \$228,000,000 maturing, and, in 1920, \$215,000,000. You see it runs a little above \$200,000,000 per year.

There are some railroads in the hands of receivers. Reorganizations of those properties may be very desirable in the common interest. In such case, this fund can be available for any financial assistance that they might absolutely have to have. Of course no assistance would be given unless needed and unless, again, it is in the public interest that the need be supplied.

Senator UNDERWOOD. Mr. Secretary, right at that point let me ask you a question, please. Is it the purpose of this bill, or the purpose of the proponents of the bill, to take care of maturing securities outside of the railroads taken over by the Government, or to limit that operation entirely to the railroads that are taken over by the Government?

Secretary McAdoo. I think this bill clearly limits it to the railroads taken over by the Government.

Senator UNDERWOOD. That is the intention of the Government.

Secretary McAdoo. Yes, sir.

THE CHAIRMAN. So that you would not necessarily, unless, as you say, it was in the public interest, assume any obligation to a road that had not been taken over?

Secretary McAdoo. I should not think that under this bill we should have authority to do it. I certainly think we should not undertake to do it.

Senator UNDERWOOD. Mr. Chairman, right in this connection, so it may show in the record, yesterday, or day before yesterday, I asked Commissioner Anderson to furnish me a list of the maturing obliga-

tions. There is some difference between this list and the statement made by the Secretary of the Treasury, because he includes in his statement the equipment trust obligations, which are not included here, but I would like to have this go into the record at this time.

The commissioner's statement to me is as follows:

The Commercial and Financial Chronicle list of October, 1917, shows the following maturities of railroad obligations: 1918, \$182,606,582; 1919, \$188,213,052; 1920, \$186,526,253; 1921, \$440,905,528.

It is noted on here:

The marked increase shown in 1921 is due to the fact that the bonds issued by the Great Northern and Northern Pacific, amounting to approximately \$107,000,000 for each road, mature in 1921, being 20-year bonds issued in 1901.

As the question was brought up, I simply wanted to have that go into the record.

The CHAIRMAN. Did you say that included or excluded the trust funds for maintenance and equipment?

Secretary McADOO. Excludes the car-equipment trusts.

Senator CUMMINS. But includes all maturing obligations of all the railroads of the country?

Secretary McADOO. Yes, sir; all that we have a record of. Taking 1921, I should assume that the Great Northern Railroad and the Northern Pacific Railroad should have no difficulty whatever in refunding those debts if they wanted to do it. They are secured by mortgage, and they are perfectly good, and particularly good once this guaranty is determined. So I hope that the rehabilitation of credit that the railroads will have once their relations with the Government are finally established, will enable them to take care of their ordinary maturities while the Government is in possession of the property.

Senator POINDEXTER. What is your view of the measure of compensation fixed or proposed in this bill?

Secretary McADOO. I think that is a fair basis, Senator. I think we should do what is fair. People may differ about that, but I thought on the whole that it was a fair basis of compensation. I especially felt that it was wise to try to arrive at a basis which would be generally acceptable and which would settle the question as quickly as possible and prevent litigation.

Senator CUMMINS. I assume that you intend to continue to employ the organizations which have heretofore managed and operated the railroads?

Secretary McADOO. I expect to do that, Senator, as far as they prove to be satisfactory, of course, in the operation of the properties, and I hope that they will all prove satisfactory.

Senator CUMMINS. What, if anything, is provided for with regard to the compensation of officers and high-priced employees, whose compensation is charged up to the cost of operation?

Secretary McADOO. In what way do you mean, Senator?

Senator CUMMINS. Every big railroad has a president who receives a large salary, and vice presidents and general managers and attorneys, and all such employees, for the purpose of carrying on the business of the corporation. What are you going to do with regard to these salaries which have heretofore been paid by railroad companies which are charged up to the cost of operation and which, of course, we guarantee under the proposed bill?

Secretary McADOO. We get the benefit in the guarantee, do we not, of what they have heretofore charged up as operating expenses. All of such charges are included in operating expenses. That is the margin of operating expense, then, within which the Government can, of course, operate. It can operate beyond that if it is necessary to do so, but I have not, of course, had time yet to give any study to the question of salaries. I have not even had time to ask for the list of the salaries paid, or the wages paid by the railroad companies.

Senator CUMMINS. I am not asking about individual cases.

Secretary McADOO. You are asking for a policy?

Senator CUMMINS. A policy with regard to salaries and expenses that are not directly connected with the operation of the road.

Secretary McADOO. Necessarily I am not going to employ anybody who is not essential to the operation of the railroads. Generally speaking, I look at it this way: These properties are simply taken over as different systems, or corporate ownerships, by the Government, and it is desirable to preserve as far as practicable their integrity until the Congress shall determine that some other course shall be taken, if it ever does. That brings up the whole question which you have been considering here, section 13, as to what ultimately is to be the status of the railroads. I don't know what you will determine about that, but certainly until that time comes we should preserve as far as practicable the various corporate organizations for the operation of their particular properties, so that when they are returned there will be no unnecessary dislocation. I do not feel that the Government should employ anybody, high or low, on the railroads, who is not necessary, and I feel again that the Government must pay in those positions what is demanded to get the right talent.

Senator GORE. Mr. Secretary, a question has arisen here several times as to whether during Government control the receipts of the railroads were Government money or railroad money, and whether the employees were Government employees or railroad employees. I would like to have your judgment on that.

Secretary McADOO. I think it is to some extent a legal question, and I think it is to some extent an academic question, and to some extent it is a very important question.

Senator GORE. I had a letter from the governor of Oklahoma yesterday as to the question of taxation on railroad property and railroad receipts. If the money is Government money the question of taxing receipts might become very important.

Secretary McADOO. To get back to your question, my view of it thus far has been that since the President by proclamation left the management of the railroads, until otherwise ordered, in the control of the respective corporations; that the corporations—that is, the board of directors and their officers—are operating these railroads for Government account and their receipts go to the Government for the handling of these properties. The employees of the railroads continue, under the proclamation, to be the employees of the corporations which are in charge of the properties under Government control and direction—the operation, I say, of the properties. I am not able to answer the legal question as to whether or not they

are actually Government employees. I have not assumed that they were, for the time being, at any rate.

Senator GORE. You have not assumed that?

Secretary McADOO. I have not assumed that they are directly Government employees for the time being.

Senator GORE. I wondered how much analogy there would be between this status and the status of a leased road.

Secretary McADOO. I do not think it is quite the same. However, there is a legal question there, as I say, that I am not prepared to answer.

Senator GORE. Yes, sir.

Secretary McADOO. As to the question of taxation by States, my own feeling has been that the existing taxation of course will be continued. I mean to say that the States will be permitted to impose taxation as usual, within reasonable limits. I do not think that the State should be permitted, because the Government has control, to practically control the Federal Treasury. Of course if they had the power and if they were permitted to tax to any extent they pleased, regardless of what was reasonable and just, they would have, in effect, control over the Federal Treasury, which I do not think Congress would be willing to permit, because they could make just as big a deficiency as they pleased.

Senator GORE. But my idea was if it was Government money, the situation ought to be met by some provision that the Government should meet the existing situation.

Senator UNDERWOOD. Does not the right of the States with reference to taxation rest on the question of ownership? If we had taken the ownership of these railroads, then they cannot tax the Government, but if we have leased the railroads and the ownership still rests in the original corporations, then the taxation is effective.

Secretary McADOO. Exactly, Senator. I have not at any time supposed that there was a question about the rights of the States to impose reasonable taxation upon the properties under their jurisdiction.

Senator GORE. I would like to insert the governor's letter at this point.

The CHAIRMAN. Very well.

(The letter referred to is here printed in full, as follows:)

[Great seal of the State of Oklahoma.]

STATE OF OKLAHOMA, EXECUTIVE OFFICE,
Oklahoma City January 14, 1918.

HON. T. F. GORE

United States Senator, Washington, D. C.

MY DEAR SIR: May I be permitted to call your attention to the importance that any congressional action re Government railroad control, does not interfere with existing methods or privileges of individual States and local units of taxation of railroad property or receipts. At this time in our State a large portion of the State's revenue is derived from taxation paid by railroads, and to amend in any form would greatly embarrass this State, necessitating new methods of taxation which would probably force the calling of an extra session of the legislature, and would be most burdensome and unfortunate to the whole of the State.

I do not know that any legislation contemplated will interfere with the State rights in this respect, but inasmuch as the Government is assuring stockholders a certain profit on their investment, it would seem, at least, wise to present our responsibility, in order that any regrettable situation may be prevented.

It is important that the present State rights and privileges relative to taxes from railroads, either by receipts or ad valorem taxation, be not amended or interfered with, but be saved and provided for in Federal legislation relative to taking over of the railroads.

Pardon me for calling this matter to your attention, but its importance prompted me to do so.

Very truly, yours,

A. L. WILLIAMS.

Secretary McADOO. As I said before, gentlemen, I think if any State undertook to impose unreasonable taxation on the railroads while the Government is in control, which would in effect be taking money out of the Federal Treasury without an appropriation by Congress, it would present a situation with which we should have to deal in some form. My own judgment is that, upon any issue of that sort, it would be easily adjusted.

Senator GORE. That situation I do not suppose would arise.

Secretary McADOO. No; and I do not mean to imply that I thought it would. I am only speaking of the principle involved.

Senator CUMMINS. To return to the subject I mentioned a moment ago, I wish the Secretary would prepare and furnish to the committee a statement showing the list of presidents, for instance, general managers or secretaries, treasurers, boards of directors, and general attorneys or counsel, and the salary paid to each, for the roads of which you have taken possession and are in control.

Secretary McADOO. I shall ask for the information, Senator, and get it as soon as possible. I do not know how long it will take, of course.

Senator KELLOGG. On that question, I would like your opinion. The Government having taken over these roads as separate organizations, title remaining in the corporation, with a view of turning them back when the exigency of the war passes, is it not of some importance that the railroads should be allowed to keep their organizations, which is of very great use to the company?

Secretary McADOO. I think the railroads should be permitted to keep their organizations to the extent that they are efficient and serviceable in conducting the operations of the properties. That, of course, I have in mind.

Senator KELLOGG. On this question of taxation, you know the States tax all property engaged in interstate commerce, some on the ad valorem basis, as other property is taxed, and in many States there are limitations by constitution that they can not tax except the same as other property is taxed, some on a basis of tax on the gross earnings, representative or the equivalent of a direct tax. These systems of taxation have been in existence for many years in the States, and there is a very remote possibility of any State attempting to tax excessively the properties of railroads for which a remedy is not now provided. Do you not think that that taxation should be continued, if necessary, by a clause in this bill?

Secretary McADOO. I do not think, Senator, that there would be objection to that. I have assumed, of course, that there was no question about that, anyway. I have not, and I do not, for a moment entertain an idea that any State will take advantage of the opportunity to oppress, or attempt to oppress, the Federal Government by undue taxation of properties while under Federal control. I was only speaking of the principle involved.

Anything that the committee thinks is desirable to meet that situation is perfectly agreeable to me, as far as I have any authority to speak.

Senator Smith, in view of the fact that you are near adjournment, and in view of the fact that I should like to say a word to you in executive session, I should be glad if I could do that.

Senator ROBINSON. I move that we proceed to executive session. (Motion duly seconded and carried.)

(The commission thereupon went into executive session, at the conclusion of which an adjournment was taken until Monday, January 21, 1918, at 10 o'clock a. m.)

GOVERNMENT CONTROL AND OPERATION OF RAILROADS.

MONDAY, JANUARY 21, 1918.

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE COMMERCE,
Washington, D. C.

The committee met, pursuant to adjournment, at 10 o'clock a. m. in the hearing room of the committee, Senate Office Building, Senator Smith of South Carolina presiding as chairman.

The CHAIRMAN. The committee will come to order.

STATEMENT OF HON. WILLIAM G. McADOO, SECRETARY OF THE TREASURY AND DIRECTOR GENERAL OF RAILROADS—Resumed.

The CHAIRMAN. Mr. Secretary, you having concluded your statement with reference to the bill on Saturday when we adjourned, is there any particular feature of it now that you would like to discuss?

Secretary McADOO. I understood that there were some features which you wished me to discuss. I do not know exactly which those are. I do not wish to encumber the record by going over old ground.

The CHAIRMAN. If the committee has no other questions they want to ask along the line of your testimony on Saturday, I would like to ask you to give to the committee, as fully as you please, the reasons why section 13 is drawn like it is. I think that has been indicated by a member of the committee, perhaps, as the point of greatest difficulty for an expeditious determination of this bill. There may be another.

Senator CUMMINS. We assume that there will be another.

Secretary McADOO. Section 13, as it stands, is, in my judgment, clearly in the interest of both the public and the owners of railroad securities. From the public standpoint it is necessary that Government possession and control of railroads shall be employed to remove for the time being competitive practices and wasteful duplication of effort, to the end that every energy shall be mobilized upon the production of the greatest amount of transportation with the least expenditure of labor, material, and money. The result of this process of unification will be that when the war ends the railroads will be to a large extent disabled for the immediate resumption of their old competitive status. It will be clearly contrary to the public interest that the railroads, thus hampered in their ability to compete, shall be returned to private management before the adoption of proper methods of public control to take the place of the competition which will have been substantially extinguished.

The adoption of a proper measure of public control to deal with this new condition will require careful study and discussion. The period immediately succeeding the war will present numerous problems of the gravest sort, some of them very grave economic problems, which will demand immediate consideration by the Congress.

In such circumstances it is not only probable, but almost certain that Congress will not find the time immediately after the close of the war to adopt a comprehensive plan for controlling the railroads in the new environment in which they will then find themselves, and at the same time to deal with all the other complicated economic problems which will undoubtedly confront it.

If this bill, as enacted, requires the railroads to be turned back to their owners within say a year, as I have heard suggested, or other comparatively short period after the return of peace, the result will be that the railroads, with competition largely extinguished, will go back into private control without legislation to protect the public, or legislation designed to protect the public will have to be enacted hastily in the midst of other problems which will be demanding the entire time and attention of Congress. Neither result can be in the public interest.

At the same time it should be borne in mind that shippers and the public generally will be accustomed to new methods of doing business with the railroads. They will find that the old methods under which they have been routing freight and have been doing business will be substantially and perhaps permanently altered, and the confusion which would arise from the attempt to suddenly restore the old competitive status, the status that existed prior to December 28, 1917, would be aggravated very greatly, and perhaps would offer quite insuperable difficulties, if legislation was not enacted in the light of conditions as they exist at that time, such as would facilitate that process of restoration and conserve the interests of the shippers and the public generally. I think, myself, that ample time will be required to deal with the new railroad status with which the country will be confronted after the return of peace.

From the standpoint of the owners of railroad securities it will be, in my judgment, highly injurious to throw the railroads back into their control immediately after the war ends, either without legislation for their reasonable protection, or with legislation hastily devised and adopted under great pressure.

The changes which must be made during the war period will force many important changes in the currents of traffic. In all probability it will become necessary, for the sake of expedition and economy in the movement of traffic, to give to one railroad profitable traffic which legitimately belongs to another, in order to relieve the latter of congestion and to enable it to handle war traffic of a temporary character.

When the war ends and before the railroads go back into private management it will undoubtedly be important from the standpoint of the security holders to make adequate provision for an equalization of these conditions under proper public supervision. If this is not done, some railroads will find themselves divested of traffic and at the same time seriously embarrassed in returning to the former competitive methods of obtaining traffic.

When the war ends the railroads will be confronted with new conditions, and these new conditions will require new and comprehensive

laws for the reasonable protection of security holders. If a time limit is put upon Congress in adopting these laws during a period of greatest possible pressure for legislation in every other direction, because, as I said before, the economic situation at that time may be of such nature as to demand imperatively the first attention of Congress—and when I say economic situation I refer to the general financial situation as well—the result can not be otherwise than disastrous to the public interest as well as to those of the holders of securities of many of the important railroads.

It is impossible now to predict which of the railroads will suffer the most in such circumstances.

The turning back of the railroads to private control at the end of the war, either without legislation to meet the new situation or with legislation hastily and therefore inadequately framed, would thus be injurious to the public interests and also to the interests of the security holders.

Doubtless this view will appear paradoxical, as some may assume that whatever would be injurious to the security holders would be helpful to the Government, and vice versa, but this is by no means the case. By reason of the radical changes which during the war must be made in the currents of traffic and in the methods of handling traffic, there is strong probability that at the end of the war some railroad systems may find themselves more strongly intrenched than ever, and with a greater hold than ever upon the traffic of the country. This clearly would be highly detrimental to the public interest in the absence of additional comprehensive legislation.

On the other hand, great numbers of important railroads might find themselves largely deprived of established traffic and seriously hampered in getting it back, and this will be highly detrimental to the security holders of all such railroads, as well as to the public interest.

It is important that an equitable distribution of traffic and the widest possible use of any facilities should be secured, not only during the war but after the return of peace. It is impossible to forecast which roads would derive the advantage and which roads would suffer the loss, but the resulting condition would be highly injurious to the public and also to a very large proportion of railroad security holders. It is manifest, therefore, that the safe thing for both the public and the railroad security holders is to preserve the existing status until there shall be comprehensive and rational legislation dealing with the entire subject; otherwise we may run grave risk of chaotic railroad conditions with disturbance to the whole economic structure at the close of the war, and which will be a menace to the public interest and to the holders of railroad securities.

It must also be remembered that if Government possession and control shall continue for as much as three years, for example—and I take an arbitrary time because no one can tell how long the war is going to last—the strong probability is that by the end of that time the Government will have found it necessary to advance from one billion to one and a half billion dollars to provide facilities and equipment which will be urgently required to enable the railroads to perform effectively the transportation services which the public interest imperatively demands. Such expenditures of Government money

upon railroads privately owned will constitute a new condition which must be dealt with in the light of the facts at the expiration of Government possession and control, or must be dealt with upon the return of peace.

It is impossible to deal with that matter adequately under existing laws and impossible now to forecast how the matter ought to be dealt with. It will be a subject for thorough study and careful and just legislation to be adopted after the war.

To put a time limit upon Government possession may make it impracticable and certainly will make it exceedingly difficult to deal with this important subject in an adequate manner before possession is automatically restored to private management. To fix an arbitrary limit, it seems to me, is to put the public at a great disadvantage in dealing with this important phase of the problem; that is, the adjustment of the debt which the railroad companies will owe to the Government for the advances which must be made to them during the period of Government control. Such improvements in the hands of the Government, without possession of the railroads, will be of little value. The Government would therefore be in a difficult situation to protect the public interest with respect to those advances, because the minute the railroads are returned automatically to the control of the railroad companies with no settlement effected of that large indebtedness, the Government will not be in position to protect adequately its rights nor to protect the public interest. It seems to me, therefore, that there is every disadvantage to the public interest in risking a limitation upon the time of Government control of the railroads, and no possible advantage to the people in fixing that time limit now.

As long as the Government is in control of the properties, and the important problems can be discussed dispassionately and not under the pressure of a stop watch, or time limit, it will be possible, I think, to liquidate the Government's interest upon a more equitable basis not only to the public but to the railroad owners themselves.

For my part, I do not see why we should now undertake to fix an arbitrary limit which might put the public as well as the private interests in jeopardy, but every consideration, it seems to me, justifies, as well as demands, that the question be left in such situation that it can be dealt with intelligently by the Congress in the light of conditions as they then exist.

Senator WATSON. Do you personally believe in the Government ownership of railroads?

Secretary McADOO. I do not, or I have not, at least, felt that it was necessary to take the actual ownership of the railroads. I believe that it will be impossible after the return of peace to restore the competitive conditions to the same extent as they existed prior to the outbreak of the war.

I favor some form of governmental regulation and control of a far stronger, more intelligent and effective character than we have had heretofore, because I am satisfied that a stronger Government control will be demanded and will have to be worked out, both in the interest of the public and in the interest of the security holders of these railroads.

Senator WATSON. That we all believe. I take it for granted that there is nobody on this committee that believes we will return to

the old competitive system. If I understood your prepared article there on the question, it struck me that the two propositions which you put forth as the objectionable features to permitting the railroads to go back to the original status was, first, that we must of necessity restore the old competitive system. I do not know how you reason that out. As far as I know, there is nobody that believes in going back to the old theory of railway management; and certainly, with the Interstate Commerce Commission running here, an organization that was established, an instrumentality that was made, created for the express purpose of handling this railroad situation, that has been dealing with it here for 30 years and longer, certainly with that sort of instrumentality it would not be necessary, would it, to go back to the old competitive system when by a very simple statute it could be arranged that in any event, if we had to have control, that they could step into control instead of one man controlling. If we have to have control, I assume it will not be necessary that we shall go back to the old competitive system at all; and yet that we shall not continue the control to the extent that this bill gives control to the Government, or to any one agency of the Government.

Secretary McADOO. That is exactly the point I make, Senator. In the absence of further legislation, and such legislation can not be had now, of course, we do not know what the conditions are going to be at the time we must deal with the problem of restoring these properties, either to the railroad managers or of exercising then a more effective control over them. If you now arbitrarily impose a time limit, and that time limit should be insufficient to enable the Congress to deal with the problem intelligently and get a proper solution, you will automatically, or it will tend automatically, to restore the very conditions existing prior to December 28, 1917. I can not myself see the advantage of tying our hands in dealing with the problem by such an arbitrary limit of time.

We attempted that, by the way, when the war-risk insurance bill was passed. The proposal was at the outbreak of the war to establish in the Treasury Department a war-risk insurance bureau to insure vessels and cargoes against the risks of the war. A great many gentlemen who feared Government ownership insisted that this bureau should be of one year's duration, regardless of the fact that the war might continue longer. No one knew how long it might continue. I said at the time that this was peculiarly a case where no limit was necessary, because war risks last during war time only; and when peace was declared, the risks would cease automatically. There would be nothing to insure. But they insisted on putting a provision in the bill that this bureau should last one year.

At the end of the year we had to rush through a bill to extend the time, and there were some difficulties in getting that bill passed. Congress sometimes gets clogged, the calendar gets clogged, things do not get consideration. That may be through no fault of anyone particularly, but simply because there is not time to reach every bill. If there had been an interregnum in the work of that war-risk bureau because a resolution could not have been passed in time to extend its life for a further period, very grave injury would have resulted to the public.

Senator WATSON. In England the railroads are taken over from week to week—continued—by resolution.

Secretary McADOO. It may be possible there because, of course, the status of the railroads in England is very different from here. I mean they are not operated under anything like the same conditions, as I understand it.

Senator WATSON. I do not think the conditions are widely different—that is to say, the way they are operated now under the war and the way we propose to operate them.

Secretary McADOO. No; but I am talking about the fundamental status of the railroads. They have not got the various State laws and various competitive conditions which exist here.

Senator WATSON. The State laws are not interfering now with operation.

Secretary McADOO. Oh, no; but I was speaking of the fundamentals of railroad conditions in England as against our own. However, I do not think it follows per se that because the conditions in England are as they are that our line of action should be governed by it, or influenced by it, necessarily.

Senator LA FOLLETTE. For example, when it comes to war-profits tax.

Secretary McADOO. No.

Senator WATSON. How is that?

Senator LA FOLLETTE. We did not follow England so exactly when it came to taxing war profits.

Senator WATSON. Not exactly; but, after all, we formulated our law on their general plan, and this bill itself is formulated on the general plan of the English law.

Senator LA FOLLETTE. Yes.

Senator WATSON. Another objection I understood you to make was that the shipper would be confused after the thing was over, that he would not know exactly what his rights were. These railroads, as I understand, are being continued under their present management, running right along just the same, except as you may make orders that will interfere with the management. That is the system, is it not?

Secretary McADOO. That is the system adopted now, Senator, but I think it may be said that even under present conditions the fundamentals of operation are already altered, or ordered to be altered, such as the rerouting of traffic regardless of the wish of the shipper, so as to get the freight to destination at the earliest possible moment, to effect every economy and to do whatever may be necessary to make the railroads more efficient instruments during this war period. That process, in three weeks, has simply begun. Of course, you can not radically alter the situation in such a short time, but I think the public interest imperatively demands very great readjustments in the old methods of railroad management under competitive conditions, and that they shall be brought about at the very earliest possible moment. The extent to which changes may result no man can foretell. The shipper will have to become accustomed, as I said before, to the new methods which will develop during that period, and the old method of routing traffic, soliciting traffic, of doing business on the railroads is bound to be materially and radically altered during Government control.

I do not know what the shipper would do and I am sure I do not know what the railroads would do if an arbitrary limit were fixed, and during the time allowed for legislation by Congress either to facilitate the restoration of the status or to make a new status, that time limit intervened and the whole thing were thrown back to private control without such enabling legislation, and there is where I think the danger of the time limit comes in.

Senator WATSON. Suppose we put a limit of six months beyond the proclamation of peace. Is there any reason in the world to suppose, having in view past legislation of the American Congress, that within that six months' time Congress would not meet its duties and measure up to the demands of the great problem and enact legislation that would take care of that situation as far as human wisdom could then devise?

Secretary McADOO. I, of course, would not imply that Congress would not intend to. I think it would intend to, but the intentions of Congress are not always consummated; and again, with a time limit in effect, Congress might not be in session. It might happen during recess of Congress. It seems to me that we are taking a perfectly unnecessary risk in arbitrarily tying the hands of the American people to deal effectively with a matter which so materially and vitally affects the public interest, by imposing a time limit.

Senator ROBINSON. If no time limit is placed in the bill, is there anything to keep Congress from acting at any time after peace is restored?

Secretary McADOO. Absolutely not; and that is the reason I feel that Congress should have a free hand in dealing with the problem with sufficient time to deal with it deliberately. Of course if the Congress should fix a time limit, just as a time limit was imposed in the war-risk insurance bill, we should have to meet it and deal with it the best way we could.

Senator POMERENE. Assume, for the sake of argument, that there was a limit of one year after the proclamation of peace, fixed within which these railroads should be turned back, and that the Congress were not able to determine a plan under which these roads should operate when they were turned back within the year, is there anything to prevent the Congress from extending that time?

Secretary McADOO. Not if it will; but suppose it did not. Suppose there were a filibuster, for instance; or suppose Congress was not in session; or suppose the two houses could not agree.

Senator ROBINSON. Under the contracts that were made, might there not be new contracts made under the authority of this legislation guaranteeing the return of the railroads within a fixed period? Might that not be a limitation upon the power of Congress to extend the time?

Secretary McADOO. It might be.

Senator ROBINSON. Of course it would depend upon the form of the contracts. If agreed upon, a contract might be made that would save the question.

Secretary McADOO. Yes, if made under or with lawful authority.

Senator ROBINSON. But on the other hand, an agreement might be made that would require an immediate return to be made.

Secretary McADOO. An agreement can not be for a longer time than the legislation authorizes. We are dealing with absolutely un-

certain conditions, more uncertain than can ever confront a nation at any other time, except during war time. Who can foretell what is going to happen in this terrible convulsion of the whole civilized world? Never in the history of the world, I imagine, has the future been so uncertain as now.

In order to deal with this matter intelligently, if you are going to try to fix a time limit, you must formulate some judgment or you must make some guess as to the duration of this war. What are you going to guess? That it will be one year or two years or five years? If you guess that the war will last two years and then you provide that the railroads shall be returned within a year after that two years, that would mean three years of Government control.

If the control lasts three years, the conditions are going to be very different than if the control lasts six months or one year. The longer the duration of the war the more the Government will have to put into these properties in the way of improvements, extensions, terminal facilities, and equipment. It must assume the burden of keeping them going, equipping them for the service of the country while it has possession of them, and the longer the Government remains in control and the larger the debt that these railroad companies will owe the American people, the more imperative it will become that a reasonable time be allowed to liquidate the Government's interest or the people's interest in these properties. I can not see the reason or the possible or conceivable justification for deliberately shutting our eyes to all the uncertainties of the situation and to the necessity of protecting the interest of the American people in the liquidation that must follow at the close of the war if the properties are returned by imposing now an arbitrary time limit that might be the most hurtful possible thing, not only to the interest of the public but to the interest of the owners of the railroads themselves.

The CHAIRMAN. Mr. Secretary, I asked you last Saturday about the disposition of the \$500,000,000 to be appropriated here, and it had been stated before the committee previous to your coming before it that this would be largely used for the purpose of meeting maturing obligations on certain classes of roads. Your answer was to the effect that it would be used in equipment and in improvements and in meeting the necessities that might arise for terminals, in other words, and you also stated, as I remember, that you thought the railroads themselves would be largely able to take care of their maturing obligations out of the proposed compensation given. What effect do you think it would have upon the railroads in investing their money and in keeping up their property and in taking care of their maturing obligations if the time limit was uncertain and indefinite? What effect do you think it would have upon them in their attitude toward their property and their securities?

Secretary McADOO. I should think that any railroad security holder who had half a thought of his own interest would infinitely prefer to have the assurance that this guaranty was going to continue until there was some final disposition of the matter by Congress than to have it arbitrarily terminated at the end of a fixed period and then find his securities, unless the Congress had settled the status satisfactorily, with no guaranty back of them, the business of his corporation altogether altered, the competitive conditions destroyed.

and the ordinary traffic that he might have had under normal conditions diverted to another line, with no assurance that he would get it back again. I think the chaos and uncertainty that would result would be extremely hurtful to the public interest and also to the interest of the security holders.

In my judgment it is to the interest of the public and to the interest of the security holders to preserve the status now established until we can work out an intelligent status after the return of peace, because any arbitrary time limit that you impose might operate to cut off the whole business and enforce the restoration of the old status, which might be the most hurtful thing possible to the public interest and to the interest of the security holders.

The CHAIRMAN. That is going upon the assumption that they will ultimately revert to their original owners, but under the present terminology used here in this section there is a doubt as to whether they ever will be returned.

Secretary McAdoo. That is a matter, of course, for the Congress to determine.

Senator GORE. Mr. Secretary, on Saturday, as I remember it, you stated that the \$500,000,000 was not to be used so much to protect the maturing obligations, but you expected the railroads to make shift to do that themselves. Would they have the same motives to take care of maturing obligations if they were uncertain as to the future fate of the railroads as they would have if they knew they were coming back within a certain time?

Secretary McAdoo. I should think, Senator, that if the security holders knew that their interest is protected or the earnings of these different properties is protected under this proposed guaranty until the railroads are returned that the investor would buy their bonds with very much greater confidence than he would otherwise.

Senator GORE. I see how it might stabilize the stock in the hands of holders, but what will be the action and motives for action on the part of the railroad management with respect to maturing obligations? We will say they do not know whether they can recover the railroads or not. If they do not take up the maturing obligations, they know that the Government will have to do it.

Secretary McAdoo. No; that would not necessarily follow. I think you misunderstood my answer on Saturday.

Senator GORE. I may have.

Secretary McAdoo. Let me clarify it. The railroads have certain maturing obligations in 1918, for instance. Those consist of equipment trusts as well as funded debts of various kinds. The equipment trusts are somewhat simpler to deal with, and, I think, can be cared for by the railroads, undoubtedly. The maturing debts they will either have to pay or refund. Let us assume that some of these maturing obligations represent bonds issued 20 years ago, first-mortgage bonds upon railroad lines of unquestioned and undoubted security. After this guaranty of income is given to the various railroad companies, so that everyone knows that the interest upon bonds can undoubtedly be cared for during the period of Government control, and assuming that the bonds are amply secured by the liens that now exist, there should be no difficulty about refunding those securities through the issuance of new bonds having the same lien as the maturing obligation. So

my judgment is that as to the great bulk of maturing obligations, the railroads having this guaranty, will be able to provide for themselves. It should not be necessary to draw upon this \$500,000,000 fund for such obligations. If, however, it should develop that any carrier under Government control found its credit impaired or the position of its property imperiled because it could not meet a maturing obligation, the Government would have power under this bill to extend aid.

I imagine that not much if any aid of that sort will be required. The purpose of this \$500,000,000 is to give, first of all, let us say, a working capital, which the Government must have to carry on these railroad operation. It took them over as going concerns and of necessity some working capital is necessary.

Senator KELLOGG. Why? The railroads have their own working capital. Why should the Government furnish that working capital?

Secretary McADOO. I am not so sure yet that the working capital, that the assets in their treasury were taken over.

Senator KELLOGG. Each railroad has its own working capital?

Secretary McADOO. If it is available to the Government, all right: so much the better.

Senator KELLOGG. The Government will only use it for the transportation purposes and the railroad will only use it for the same.

Secretary McADOO. Suppose it is not available, Senator. That is a legal question. The question has been raised as to whether or not the Government is entitled to the cash assets of the railroad companies.

Senator KELLOGG. Do you mean that the assets will be tied up and not used at all?

Secretary McADOO. No.

Senator KELLOGG. What use has the Government got for money except for transportation purposes?

Secretary McADOO. It has none; except for improvements and various other things that must be carried on. I say, to such extent as this money may be needed for working capital it must be available. If we need it, we must have it. So, it is a precautionary and intelligent provision to be made for that purpose.

That is not so important as other features which we must provide for. First if there should be any deficiency in earnings as against the guaranteed rental or income, a fund must be provided to make good that deficiency. I hope there will be no deficiency. I hope that such economies can be effected as will prevent deficiencies, and I even hope that a surplus may result from Government operation. Of course, that is a hope. I do not know. No man can tell. But it is necessary to have a fund to protect the guaranty.

It is also necessary to have a fund for essential improvements, betterments, and equipment. I do not know how much that will require. The railroad companies have been expending something like six or seven hundred millions dollars a year for such purposes until the last two years when they have expended a very much smaller sum, only about \$250,000,000 per annum.

I have expected that for such improvements and betterments, as well as for equipment that may be essential, large drafts may have to be made upon this fund. If it should not develop to be necessary

so much the better. Then we have the money in hand for any other use that may be required.

Then there is another thing: Some of the railroads that we ought to take possession and control of are in the hands of receivers. Those properties may have to be reorganized. I think it would be wise to facilitate the reorganization of such properties provided it is done upon a sound basis.

If such cases arise, this fund may be resorted to to facilitate or help such reorganization.

Those are the general uses for which that appropriation is suggested.

Senator KELLOGG. Mr. Chairman, I would like to ask a few questions when you are through.

The CHAIRMAN. Senator Kellogg, you may ask your questions now.

Senator KELLOGG. As I understand you, you think the period should be indefinite and should continue until Congress shall affirmatively turn the roads back because some legislation will be necessary to govern the future policy of the roads as to pooling and competitive operations.

Secretary McADOO. I can not answer the question, Senator, better than my statement. I should like to refer to that.

Senator KELLOGG. That is the substance of it, is it not?

Secretary McADOO. It does not cover it fully.

Senator KELLOGG. Well, what other legislation—what other legislation must Congress enact in order to turn the railroads back?

Secretary McADOO. It does not need any if it wants to restore the old railroad or competitive status.

Senator KELLOGG. Very well.

Secretary McADOO. Just as things were before the 28th of December. If you want to take the chance of that, then you do not need any legislation except to fix an arbitrary time and let it go at that.

Senator KELLOGG. You think that in the future the pooling laws and the Sherman law should be repealed as to railroads and the competitive condition done away with?

Secretary McADOO. I do not know. I say that is a condition with which you should deal when it arises, and when the test of experience shows what is necessary to be done. It may be wise to repeal those laws; I do not know.

Senator KELLOGG. Supposing the Congress should say, "We have established a policy and we do not propose to change it." Then you would keep the railroads until Congress would change the policy, would you not?

Secretary McADOO. If the Congress says so, of course. That is for the Congress to determine.

Senator KELLOGG. In other words, because something may happen in the future that would change the policy the American people would have toward the railroads, you want to keep them until that policy is developed and changed by Congress?

Secretary McADOO. I do not want anything so far as I am concerned. My view is that it is wiser for the Congress to keep this matter under control so that it may legislate with respect to known conditions and do what at the time may seem manifestly in the public

interest rather than now to undertake to resolve all those conditions by imposing arbitrary limitations.

Senator KELLOGG. I understood you to say that if in the operation of these roads the Government should be routing traffic and take away one road's traffic and give it to another, after the war the Government should replace that traffic and undo the damage it had done.

Secretary McADOO. I did not say that; I beg your pardon. You misunderstood me.

Senator KELLOGG. What has the Government got to do with bringing back original conditions as to traffic?

Secretary McADOO. It has nothing to do with it except to enact laws, if they should be needed, when the conditions confront us, when the known conditions appear, that will facilitate the disposition or readjustment of the status in a way that will be most compatible with the public interest and the rights of the owners of these railroads.

Senator KELLOGG. What do you mean by that?

Secretary McADOO. I mean exactly that.

Senator KELLOGG. What legislation, for instance, will facilitate it? It is very easy to say "legislation to facilitate traffic." What do you mean by legislation to facilitate traffic?

Secretary McADOO. I have explained, I thought, at some length—at least I tried to explain—that very great alterations in existing methods of doing business will inevitably result from Government control, particularly if it lasts for, say, one or two years, and the longer it lasts the more radical, of course, those alterations are going to be. Traffic which has been built up by a railroad under the old competitive condition, where it has some advantages in location or in the position of terminals, or some other extraneous advantage, and by perhaps superior methods of soliciting freight, or otherwise, which has resulted in routing traffic or attracting traffic over its system when it would not normally flow that way, I say that those conditions are bound to be disturbed where all facilities are used in common under Government control.

When you undertake to return these railroads to the owners by restoring the previous status without further legislation, I say that a chaotic condition will present itself, not only to the railroad management when it undertakes to take control and restore its traffic, but also to the shipper who has adjusted himself to new methods and conditions under Government control. Also, during the same time, liquidation of the Government's interest in these properties has got to be worked out and established. I think all of that will require further legislation.

Senator KELLOGG. What legislation? That is what I want to get at.

Secretary McADOO. Legislation to determine just what shall be done with respect to the conditions then prevailing. If you will tell me the conditions I will give you a suggestion of legislation; but I can not give you a suggestion of legislation unless I know the conditions, and my argument is, Senator, that there is an uncertain condition in the future with respect to which Congress may have to legislate. I think, therefore, that a time limit upon the action of Congress should not be imposed in this bill. That is my judgment, for what it is worth.

Senator KELLOGG. I would like to ask you one or two more questions. Do you think the power to fix rates should be taken away from the Interstate Commerce Commission and the State commissions?

Secretary McAdoo. I think that when the President is operating the railroads for a war emergency it would be extremely unwise to have his power hampered in any way, so that he can not meet the emergencies that may arise. The railroads are under Executive control, and I think the discretion of the President in those matters should be exercised unhampered, just as his discretion as Commander in Chief of the Army and Navy of the United States should be exercised unhampered, to enable him to move troops wherever necessary to protect the national interest. Wherever it is essential that he use all the railroad facilities to back the Army and Navy or protect the public interest he should be free to do so in such manner as is, in his judgment, necessary.

Senator KELLOGG. I am not talking about the movement of trains or the moving of traffic, but I am talking about the State commissions that to-day have to do with the regulation of rates and the Interstate Commerce Commission which regulates rates, not only the amount of the rate but the relative reasonableness of those rates as between communities and States. Should that be left where it is or should it be placed in the hands of one man?

Secretary McAdoo. I think the power unquestionably resides in the President to determine those questions, and I think it is very essential that he should have the power. The President's proclamation has expressly left that status unimpaired except to the extent that it may be determined in the public interest to alter it from time to time. As it stands to-day, the State commissions are exercising precisely their same functions. The Interstate Commerce Commission is exercising its same function, and, for my own part, I think as little disturbance should be made as possible in those matters; yet, at the same time, it is very essential that the President should exercise his full powers as the public necessity requires.

I will give you an instance. The other day the conditions in New York were very threatening. The harbor had been frozen to such an extent that it was difficult to transport coal by water. As a matter of fact, it was almost impossible to do so. Long Island was about to be shut off entirely; New England was in a critical condition. I directed that coal trains be carried through the Pennsylvania tunnels underneath the city of New York. If I am not mistaken, and I state this from memory, there is a provision in the franchise granted by the city of New York to the Pennsylvania Railroad that freight shall not be carried through those tunnels, or there is some limiting condition by regulation of the public service commission that it shall not be done.

If the President had been obliged to make application to the State commission for permission to use these tunnels to save the people of Long Island from freezing, they might have frozen before he could have gotten it. I ordered it done and it was done immediately, and those people have been saved. In a case of that kind I do not think these limitations should apply. Let us take the case of demurrage.

Senator KELLOGG. Before you leave that case, Mr. Secretary, the question you present has reference to power simply to move freight and no reference to the rate proposition whatever. My question was as to rates.

Secretary McADOO. I will come to the rate question in a moment. Let us take the case of demurrage.

I believe that every railroad man in the country, and most shippers, too, will agree, even though their interests are affected by it, that the rates of demurrage imposed by the commissions of the different States, and, I think, by the Interstate Commerce Commission, so far as interstate traffic is concerned, have been so small as to encourage the use of freight cars for warehouse purposes. It is a tremendous and terrible abuse; it is affecting the public interest vitally, and is imperiling the success of America in this war, because if every railroad car could be kept moving to-day and we got the maximum efficiency out of railroad equipment, it would go a long way toward saving the situation.

Some States have laws about demurrage. Some of them give a free period of three days, and some of them impose demurrage rates. I am told, by statute. In many cases State railroad commissions impose demurrage rates and make regulations as to intrastate traffic. There are 48 States, each with a railroad commission, and the Interstate Commerce Commission in addition, making 49 regulating bodies. To reach that demurrage question and secure the prompt release of freight cars, it was necessary to issue a regulation of uniform application prescribing rates. That power resides in the President. As his representative, I exercised it the other day and it goes into effect to-day.

Gentlemen, if the President had had to make application to 48 State railroad commissions and to the Interstate Commerce Commission, as well, for permission in this war emergency to issue regulations on demurrage and to impose a new charge or rates, when do you think we should have accomplished it? It might have taken weeks to get a decision. It might have destroyed the whole effectiveness of the operation. It is essential that the President should control that power.

Let me say that the regulation of rates is a very complicated question. We have a fabric built up and interwoven by the Interstate Commerce Commission and the various State commissions over a period of many years. It is not only a question of the amount of the rate, but of the effect of the rate upon different communities. Those rates have relation to the economic status and the industrial activities of the country. I think that any man who undertook lightly to disturb that rate structure would be doing a very foolish thing, and naturally the President would not undertake to exercise the power he has under the law to destroy or disturb rates lightly or unnecessarily.

As I said to the State commissioners who called on me the other day, the ordinary procedure will continue to be observed; that the advice and suggestion and assistance of these commissions could be made of great value in the management of the railroads; that the purpose of the President was and is not to exercise any power he possesses to override the authority of the Interstate Commerce Commission and various State commissions except in cases where it is

clearly necessary to do so to meet the war emergencies or to serve the public interest.

I should say this about rates: When the Government makes a guarantee of income to these railroads, if the power to make rates is left in other hands than those of the President, while the Government is in control, what control will the Government have over the revenues of these railroads?

While I do not mean to insinuate that any State commission would use the power to make rates, if the unrestricted power should be conceded to it, for the deliberate purpose of reducing the earnings of the railroads while in Government control, nevertheless you must realize that if the State commissions are permitted to control the rates while the President is operating the railroads, they could reduce rates to such an extent as to force a deficiency of earnings and thus make the Government liable on its guarantee of income to the railroads. In this indirect manner it will be possible, therefore, for moneys to be withdrawn from the United States Treasury without any action or control of the Congress. This manifestly would be unwise; it would, in fact, create an impossible situation. The Congress could not permit itself to be deprived of the power to protect the revenues of the Government and to protect the Federal Treasury.

Senator KELLOGG. That means that during the war, not for six months thereafter, or possibly a year, but indefinitely, until the President shall see fit to turn them back, practically the one man is going to fix not only the relative rates but all the rates for the moving of the commerce of the United States?

Secretary McADOO. It does not mean that, Senator.

Senator KELLOGG. Why doesn't it?

Secretary McADOO. It means that the power resides there to do it. The President has many powers that he does not exercise.

Senator KELLOGG. I have not seen many lately.

Secretary McADOO. You have not? I think if you would give me time I could prepare a long list for you of powers that he does not exercise.

Senator KELLOGG. That is, he can exercise the power if the occasion arises, according to your theory, until Congress agrees on some legislation?

Secretary McADOO. Yes; I think so, but after all it rests in the hands of Congress. You can curtail the President's power any time you choose to. My argument, gentlemen, is that you are in possession of certain powers which you can exercise at will. If you do not want to exercise them, that is your own affair. I have no personal interest in it. I am simply giving my opinion, and I do not think it is worth much. I am putting it in the record for what it is worth.

Senator KELLOGG. I think it is worth a good deal. That is why I wanted to get it. I can see that it is an awkward situation, that the State commissions will, perhaps, have the power to cut down the income of the railroads, as guaranteed by the Federal Government. On the other hand, these State commissions for a great many years have performed a great many services between the people and the railroads in little matters of service and connections, and lines built between railroads.

Secretary McADOO. They are not going to be interfered with in that respect, Senator. Why, it would be foolish for the Federal Government to undertake to pass upon local questions, for instance, laying a side track to an industrial plant, or other such affairs.

For my part I am willing that the State commissions shall continue to exercise their powers, and they are not going to be interfered with at any time, except in cases where it is clearly necessary in the public interest and for the purposes of the war. Their powers should not be allowed to override the judgment of the Federal Government as to what the war necessity may be in the management and control of these railroads.

Senator KELLOGG. This question has arisen in my mind, Mr. Secretary, in this connection: In taking over these railroads as an exercise of the war power, that was probably a very proper exercise of the war power to meet military necessities. I am wondering how we would project the war power into it in times of peace—if the courts would not hold that after a lapse of a reasonable time after the conclusion of the treaty of peace, the roads would not force their return.

Secretary McADOO. I think that is a question of policy for Congress to determine. If by legislation you determine to and do create an Army of 2,000,000 men, they have to be projected into peace times before you can restore them to private citizenship.

Senator KELLOGG. You can continue that indefinitely, but can you hold private property indefinitely?

Secretary McADOO. You can continue this railroad possession indefinitely by act of Congress. The power of Congress is not limited in this respect. It is for you to determine the policy.

Senator KELLOGG. I want your ideas definitely. I want to know whether, after a lapse of a reasonable time, the Government could not hold them?

Secretary McADOO. I am frank to say that if the Congress does not fix a time for the return of these properties and does not legislate any further, and the President's control was left to the present law, the railroads would have to be returned after a reasonable time, and the courts could determine what is a reasonable time for their return. Again, this is merely my opinion as a "one-horse lawyer."

Senator WATSON. Or else complete Government ownership, and they would have to buy them.

Senator KELLOGG. With the Government in possession of part of the lines and private individuals in possession of part of the lines.

Secretary McADOO. You mean the short-line railroads, Senator?

Senator KELLOGG. The short lines; yes. It is going to be disadvantageous to those short lines, is it not?

Secretary McADOO. I think not.

Senator KELLOGG. To have indefinite operation by the Government?

Secretary McADOO. I am quite sure the short-line railroads will find the Government a very much more benevolent master than the trunk-line railroad managements have been.

Senator KELLOGG. They do not seem to think so, Mr. Secretary.

Secretary McADOO. Well, they are taking counsel of fear. So far as I am concerned, I never had much respect for the counsel of fear, and especially in time of war. We have got to take counsel of

courage and go forward and do the things imperatively demanded in the situation.

Senator KELLOGG. Have you examined this plan of compensation carefully, Mr. Secretary, as to what it will return to the railroads?

Secretary McADOO. I have examined it with a fair degree of care. I do not say that I have gone into a thorough analysis of the figures. I have been more concerned with the principle than with the details, and the principle of the compensation is, I believe, fair and just.

Senator KELLOGG. It is a physical impossibility for any committee of Congress to take each separate road and fix the standard of value on the use of that property, is it not?

Secretary McADOO. Why, I should say so.

Senator KELLOGG. We would never get any legislation.

Secretary McADOO. I should not like to be asked to express an opinion as to the efficiency or ability of Congress or of a committee of Congress. I may say in passing that I have very great confidence in the committees of Congress.

Senator KELLOGG. It would be difficult, would it not?

Secretary McADOO. I do think the problem is so broad that it would be difficult for the committees to work it out. But you could adopt some plan like that suggested in the proposed bill.

Senator KELLOGG. You think this compensation that you ask to be guaranteed to the railroads is a fair and reasonable compensation?

Secretary McADOO. I believe it is. I have prepared just a brief memorandum on that phase of the matter and, with your permission, will read it.

Senator KELLOGG. I should be very glad to hear it.

Secretary McADOO. The administration was confronted with the necessity of taking an extraordinary step to solve an extraordinary transportation problem. What I have already said has emphasized some of the controlling needs which could only be met by putting the power of the Government back of railroad operation. The absolute coordination and, as far as necessary, common use of all railroads and their rolling stock, regardless of any private interests; the entire disregard of established routes for the movement of traffic when other routes would insure more or quicker service; the necessity for economy in the use of labor and material so as to do all that might be necessary for transportation with the least drain on the country's other demands for labor and material; the need for insuring the supply of capital necessary, notwithstanding the impaired credit of many railroads; the coordination of the Government demands for priority in shipment, impossible under private railroad management; the absolute necessity for assuring railroad labor that its just demands would be met without necessity for strikes or threats of strikes. All these things and others, which I shall not attempt to enumerate, made it imperative that the Government should, without delay, assume possession and control of the railroads as a war measure. It did this and thereby brought into existence full governmental power to readjust methods of railroad operations and the currents of railroad traffic absolutely regardless of the interests of any particular railroad company or of any private or selfish interest.

This extraordinary step being necessary, it was essential that it should be taken in a manner calculated to help rather than to hurt a financial situation of fundamental importance. Such action was calculated to cause the gravest disturbance to the whole financial structure of the country unless unquestioned assurance could be given by the Government of an adequate protection to the holders of railroad securities, representing something like \$16,000,000,000 in bonds and stocks. Even in time of peace the public interest would have made it highly important to avoid any such financial disturbance, but in the present war, when success can not be achieved without the raising of unprecedented amounts of capital, it would have been unthinkable and self-destructive for the Government in taking over the railroads to do so in such a way as to disturb rather than reassure the general financial situation.

The Government had to take the step to promote the successful conduct of the war, and it would have been, in my judgment, most unfortunate if the step had been taken in such a way as to make the winning of the war more difficult. After a careful study of the situation, I have reached the conclusion that the three-year basis, as proposed, would not only be reasonable and just, but that it would give the necessary stability to the general financial situation and that it would carry with it the financial reassurance which was necessary in order to help instead of hurt the great financial undertakings which the Government itself must carry forward. It must be remembered that the step which has been taken is not intended to be a permanent one and therefore the proposed guarantee of an income is not intended to be permanent. The Government has acted with respect to an existing emergency, has taken temporary possession and control of the railroads, and has the right to turn them back to the owners at any time it sees fit, even during the period of the war, under the law as it now stands, and in the meantime it has the option to readjust, according to its own judgment of the necessities, the currents of traffic and the methods of operation. The measure is an emergency measure and the compensation is upon an emergency basis and can not be correctly put upon exactly the same foundation or basis which might be proper if the assumption of possession and control were permanent and the guaranteed income were perpetual.

You have heard the arguments of the carriers as to why the proposed guarantee is too small, and you have heard and doubtless will hear arguments as to why it is too large. Any matter of such complexity might be made the subject of endless debate, and there might be a hundred different views, each perfectly honest and well informed as to the precise basis that would be the best; but after hearing all that has been suggested from every standpoint since the President's proclamation, I have remained convinced that the basis proposed is fair and reasonable, and that is what the Congress ought to direct their attention to, and that is what the courts would impose if the question were remitted to the courts. I am particularly convinced that it is fair and reasonable in view of the optional character of the possession and control. Moreover, a just basis promptly provided and accepted will aid the Government incalculably in carrying on successfully the stupendous financial undertakings essential and, in fact, vital to the success of the war.

That, in general, is the principle which I have felt should animate us in dealing with this very vital problem. I do not attempt to state the figures with accuracy, although I could do so by referring to memoranda, but I may say that in a general way the net income of the railroads, the character of net income we are dealing with here, was something like a billion and thirty-five million dollars in the fiscal year ended June 30, 1917. Upon the basis of guaranty proposed, the Government commits itself to a guarantee out of the revenues of the railroads of about \$935,000,000. Am I right about that?

Senator KELLOGG. That is about right.

Secretary McADOO. In other words, we are taking the railroads over under a guaranty of about \$100,000,000 less than they earned in the last fiscal year of the period, and, in addition to that, excess-profits taxes are to be paid out of that guaranteed income.

If the Government, with its powers of coordination and common use of facilities, with the unquestioned economies that may be practiced under its control of the situation, and with an advantage of \$100,000,000 over the proposed guaranty as shown by the last fiscal year's earnings, has not made a fair trade upon the merits of the proposition for a temporary use of these properties, then I am frank to say I do not know what would be fair.

After all, this is merely an expression of my opinion. I do not say my opinion is worth more than that of anyone else, nor even as much, but I feel that upon the merits of the proposition, and the character of use the Government is making of the properties, and the fact that it has been able to get possession immediately, without regard to the interests of stockholders or bondholders, that it has a right to turn the properties back at any time with any alteration it may have made of existing or preexisting methods of doing business, which would have to be readjusted by the carriers themselves, I think the basis is fair, and the Government must be fair and just in this situation.

There is another reason: Whatever you propose to these railroads is not something that you can impose merely because you propose it. You can merely suggest a fair basis of compensation to them with the expectation and hope that they will all take it promptly and put at rest all the uncertainties and anxieties with respect to the securities these railroads have issued and which are held in large part by banks and fiduciary institutions throughout the country, as well as by individual investors, and which constitute a very considerable and vital part of the credit foundation and structure of the country.

I would rather err on the side of liberality and get an agreement with everyone of these corporations as quickly as possible and set those questions at rest, so that the great financial operations of the Government may proceed without having this cloud on the financial horizon, than to try and pare the thing down and be illiberal about it and remit these companies to the courts for their remedy and thus keep the whole financial situation in suspense and doubt until decisions of the courts are rendered.

I think there is one thing the Government can not stand for, and that is deliberate injustice to any interest, public or private, especially in circumstances of this character, where so much is at stake; and I

feel, therefore, that if we can offer what would be generally regarded as a fair basis for the use of these properties, so that the carrier would be willing to accept promptly and keep the matter out of litigation and remove all uncertainties, it would be the best thing we could do, not only for them, but for the protection of the Government itself in the matter of damages that may be claimed, and in the common interest as well.

Senator KELLOGG. It has been suggested, Mr. Secretary, that those roads which had liberal incomes would accept it. Those which did not receive very good incomes under this guaranty would refuse to accept it and go to the courts; that, therefore, the Government would be paying liberally to the well-to-do roads and making up to the poor ones an additional compensation. That has been suggested before the committee.

Secretary McADOO. Suppose that happens; what is the remedy? All we can propose is fair compensation; and if they do not accept it, the courts will protect them.

Senator KELLOGG. Your idea is that all the railroads will come under this or not?

Secretary McADOO. I do not know. I still think there are intelligent railroad managements in the country, and intelligent investors also, and I think they would accept what is a perfectly fair and just basis if it is offered to them.

Senator TOWNSEND. Suppose, Mr. Secretary, these less fortunate roads did not accept; do you think you have authority to fix their compensation over that which this rule has laid down?

Secretary McADOO. Section 1 applies to carriers of a certain class, and I think will satisfy all roads of that class. As I understand section 3 of the bill, either as it is now drawn or as you may amend it, it will offer an opportunity for those railroads which can not bring themselves within the category of section 1.

Senator TOWNSEND. It would not necessarily mean, then, that these roads would go into court?

Secretary McADOO. Not necessarily; no.

Senator TOWNSEND. If you felt that you wanted to increase their compensation over what the general rule prescribes for all carriers, you could do that?

Secretary McADOO. There is a method under section 3 of determining it which they could resort to without going into court.

The CHAIRMAN. That does not apply, however, to other than class 1?

Secretary McADOO. No.

The CHAIRMAN. That rule applies rigidly to class 1?

Secretary McADOO. Precisely. I presume you refer to section 1.

The CHAIRMAN. Outside of that you are at liberty to make such agreements as the circumstances may justify?

Secretary McADOO. Under the limitations that may be prescribed by the bill.

Senator TOWNSEND. So this bill does not necessarily give to the committee or to Congress or the country the amount of compensation which will be granted to these railroads as a whole?

Secretary McADOO. It can not give it in exact terms; I mean in amount. You are establishing a principle upon which those arrangements may be made.

Senator TOWNSEND. So that the average rate of compensation given to all the railroads of the country may be much greater, or some greater, than the amount prescribed by this rule would indicate?

Secretary McADOO. It might be, but it might be less than the estimates that I have just submitted. In other words, I have said that the aggregate guaranty to all the railroads the use of which the Government may retain during the war might be \$935,000,000 upon the proposed basis. When it is worked out in actual practice it might be a little less or a little more. I do not think it will vary very much either way.

The CHAIRMAN. Class 1 comprises about 75 per cent.

Secretary McADOO. Ninety-seven per cent.

The CHAIRMAN. Ninety-seven per cent?

Secretary McADOO. Yes; I think that is right.

Senator TOWNSEND. I was going to ask another question on that. Why is class 1 mentioned here?

The CHAIRMAN. It is not mentioned.

Senator TOWNSEND. I mean why do the Senators suggest class 1?

Senator KELLOGG. It is not. We have statistics, and the commission did not have statistics for all of the roads. Some of them do not even report.

Secretary McADOO. Do not report to the commission.

Senator TOWNSEND. I understand that clearly.

Senator CUMMINS. The bill covers every railroad, whether it is a mile long or 10 miles long or a thousand.

Senator TOWNSEND. Certainly.

Senator CUMMINS. Without regard to whether it reports to the Interstate Commerce Commission or not.

Secretary McADOO. The bill does not in terms refer to such classification. I am speaking only of the Interstate Commerce Commission classification of the carriers reporting to it.

Senator TOWNSEND. I understood it did, but the Senator from Minnesota suggested it applied to class 1.

Senator KELLOGG. No; I did not. You misunderstood me if you think I suggested that.

Senator TOWNSEND. Then, I did.

Senator WATSON. Mr. Secretary, there is one question I want to ask you, with a view to obtaining something on the present status. Was the Garfield coal order designed primarily to relieve railroad congestion, or to distribute coal to the place or places where it was most needed? In other words, was it primarily a transportation problem or a coal problem?

Secretary McADOO. I think, Senator, it was both. I think not only that coal distribution was unequal, but the congestion of traffic has, of course, greatly interfered with the prompt movement of coal. The weather for the past four weeks, which has been of such phenomenal severity, has tremendously impeded the operation of railroads. There is no question about that. Everyone realizes it.

Senator WATSON. Were you a party to the composition of the order?

Secretary McADOO. No; I was not a party to the composition of it, but I approve the principle of it. I think it was a wise thing to

do. Every once in a while we have to submit to surgery, you know, and conditions had developed which made Dr. Garfield's action necessary. I think the hurt, as is usual in such cases where you jump at hasty conclusions, will be very much less than anticipated, and that the benefits are likely to be very large. The benefits would have been much larger so far as the transportation end is concerned, if there had been decent weather for the last week; and I may say that the country is playing in somewhat hard luck as to weather. I had planned with a great deal of care, and preparations had been made in conjunction with the State councils of national defense, the governors of the States, and the mayors of cities, together with business organizations, to make a great freight moving this past week, but the unusual weather conditions have hampered it very much.

Senator POINDEXTER. Can you not get the cooperation of the Weather Bureau?

Secretary McADOO. I have endeavored to, but you see I have failed. The disposition has been right, but the performance has been bad.

Senator WATSON. That is to say, as I understand, there would be lots of other things not shipped, manufactured products, and so forth, because the factories were shut down, and that would give the coal that was needed?

Secretary McADOO. Not only that, but the demands upon the fuel supply itself have been extraordinary.

Senator WATSON. But that would give the coal the right of way?

Secretary McADOO. It would give the chance to ship the coal where it was needed, and not haul other things that are not so material.

Senator KELLOGG. That would hardly be an excuse for closing down sawmills in remote parts of the country that did not need any coal.

Secretary McADOO. Did they close any of them, Senator? You must be speaking of the West.

Senator KELLOGG. No.

Senator WATSON. I did not intend to argue the coal proposition with you, Mr. Secretary, because you say you did not have anything to do with the composition of it. I wanted to find out something about it, because the order itself, as I recall reading it, says—and I may be in error as to that—that it is designed also to aid the Director General in the transportation problem.

Secretary McADOO. I do not think it makes very much difference what the order says, or how it is phrased. The object to be gained is certainly desirable, and as far as I am concerned, I do not care whether it was said to be done to help the Director General, or at his instance, or solely for his personal benefit; if we can help the country by doing it, I am for it. As I said before, I believe the results will be beneficial. I wish we had been able to command the sort of weather that would have enabled us to make it even more beneficial. I am very much in hopes—and I say this not merely optimistically, but because I think it is in the cards—that assuming a reasonable quality of weather for 30 days, and with the things that are in motion now, the rerouting of traffic and the use of certain facilities more effectively for the vital needs of the Nation than has been possible heretofore, the improvement in the motive power situation and the release of equipment that we hope to bring about, we shall improve the situation to such an extent—I say I hope that

it may be possible to improve the situation to such an extent that that order may not have to go as far as is now indicated. I am expressing a hope, and I do not want to have any unjust inferences drawn from it. Of course, if my hopes are realized it will not be necessary to continue the order for the full length of time suggested.

Senator POINDEXTER. What has been done so far, as the result of this remedy, Mr. Secretary, in regard to the coaling of ships and relieving the congestion in New York and other congested points? Have you noticed any improvement?

Secretary McADOO. Yes; decided improvement there already. There, again, I may say that the condition of ice in the harbor, before this freeze set in yesterday, has been much more favorable the last few days than it has been for some weeks. Of course, the conditions of navigation in New York are essential to expeditious movement of ships and freight, but I am sure that the ship situation is going to be largely relieved. I also believe that just as quickly as the problem can be sufficiently worked out and necessary preparations made for it—and it is difficult to do that in the winter months—we shall be able to effect a better distribution of traffic to the ports of the country so that such a heavy burden will not be placed on the port of New York. That port will have all it can do in any circumstances, but we must see that it has not more than it can do, if it is possible to avoid it.

The CHAIRMAN. Mr. Secretary, of course, this is a matter of great interest to all of us, about what you are doing with that. But the present subject is what we are going to do with this bill, and I would suggest to the committee that we proceed with the consideration of this bill so that we might expedite matters.

Senator POINDEXTER. Mr. Chairman, just allow me to suggest right there that, so far as the question I asked is concerned, one of the determining things I expect to influence my vote on this bill is the existing condition and the experience under the control which has been taken over and which is dealt with by this bill. That is the subject of the bill.

The CHAIRMAN. You want to get clearly in your mind how much power you are giving and how it is going to be used.

Senator POINDEXTER. I want to get the benefit of experience so far as we have had experience.

The CHAIRMAN. In the light of the order that was issued the other day.

Senator POINDEXTER. In the light of the condition of Government control which is dealt with by this bill, and nothing else is dealt with by it. That is the exclusive subject of the bill.

Senator CUMMINS. Mr. Chairman, I would like to ask a question or two, and I call the attention of the Secretary to section 13, about which there has been a good deal said this morning. You seem to assume, and in that assumption there has been general concurrence, that the period of competition among railway companies has passed and that we are to substitute something else for it. Did I correctly understand you?

Secretary McADOO. I do not quite understand you, Senator. I beg your pardon. You referred to section 13?

Senator CUMMINS. You said that these roads never could be restored, or ought not to be restored to their present owners under the system of competition which has heretofore prevailed?

Secretary McADOO. Yes.

Senator CUMMINS. Inasmuch as competition is the essential feature of private ownership, why should we go back to private ownership if competition is no longer to be the controlling feature?

Secretary McADOO. I said, Senator, that I thought—and I am merely expressing an opinion, of course—I said I thought it was going to be possible for this control, if it lasted long enough, to demonstrate certain things which would necessitate very material alterations in the existing methods of doing railroad business; that it would be impossible, I thought, to restore the preexisting status, which I referred to as the “competitive status,” simply for convenience, and therefore I felt that Congress would of necessity have to legislate with respect to a new status, the status now created, and which may develop in many additional and unforeseen ways. A very uncertain problem will be presented in the future, and therefore I think the Congress will be better able to deal with it in the future if no time limit is set in this bill for the return of the railroads to private control.

Senator CUMMINS. I believe that is true and have long believed it. But we can not turn these properties back to the owners and allow them to be operated without competition, can we?

Secretary McADOO. Well, I do not know, but I think you can, Senator. You can restore the old conditions, if Congress should think it wise. I am convinced that a stronger and more intelligent Government control of the railroads than we have had in the past must be a dominating feature when the final disposition of this question is made by the Congress. As to whether or not as a matter of economic policy the stronger Government control I have suggested or the return to the old private control is the sounder is not for me to determine.

Senator CUMMINS. No; I am not asking for your opinion on that subject, because it is a controverted subject.

Secretary McADOO. It is.

Senator CUMMINS. But what you are looking forward to—and I think everybody must be conscious of it—is that there is a very serious problem, or there will be, before Congress, with regard to ownership and operation of our public-utilities properties of this character in the future, and that it will probably take Congress a good while to reach a sound and intelligent conclusion upon that subject?

Secretary McADOO. Of course, I do not know how long it will take, but it will take a long time. My own feeling about it is this: It is a very uncertain situation that we must confront, and it seems to me we should be doing a very unwise thing to place an arbitrary limit on the time that may be required to settle so important a problem wisely and soundly. That, again, I say is merely an opinion.

Senator CUMMINS. You can not eliminate competition among the various railroads of the country unless you eliminate the individual and the selfish interest which prompts competition, can you?

Secretary McADOO. I should not think you could, except through strong Government control somewhat along present lines or through

Government ownership. I say, Senator, that it is for the Congress to determine what policy shall be adopted in the light of conditions as they present themselves after the return of peace. My sole point is that when that time arrives the Congress ought not to find its hands tied in dealing with the problem by an arbitrary limit imposed now, when it must be imposed with uncertainty as to the conditions the future may develop.

Senator CUMMINS. Congress must legislate on that subject when the railroads are returned, in whatever condition they may be. But in your view there would be a good deal of chaos if they were returned without appropriate legislation governing their relations to the public and their relations to each other?

Secretary McADOO. That is my feeling about it. I think that the status is going to be greatly altered, and that relief by legislation will be necessary.

Senator CUMMINS. You indicated, however, that the President had the power to turn them back at any time he pleased.

Secretary McADOO. Yes; under the existing law I think he has the power now to turn them back if he considers them unnecessary for war purposes. I think he could do that.

Senator CUMMINS. And while you would think it would be unwise for Congress to fix a definite period for their return to their present owners, you think it would be wise to leave the President with the power to turn them back at any moment that he saw fit?

Secretary McADOO. I think the President ought to be given an indefinite period to exercise his discretion for the war purposes for which he took them over, just as I think Congress ought to have an indefinite period in which to determine their status after Congress is called upon to act.

Senator CUMMINS. After the war is over—we will assume that they would not be turned back until the war is over—but after the war is over you leave it with the President to bring about the very same chaos and confusion which you think Congress ought not to be guilty of.

Secretary McADOO. The President's power is not limited as to time under the proposed bill any more than the power of Congress is, but that is for Congress to determine. Of course, you have the power, if you see fit, to put a provision in this bill that the President shall not turn them back, even, within the time that Congress fixes, or shall not turn them back at all until Congress legislates about it.

Senator CUMMINS. Do you not think, then, that we ought to make some provision at least when peace comes that would prevent the President from turning them back to their owners until Congress acted?

Secretary McADOO. Well, I do not see any objection to it. The bill so provides, as I understand it.

Senator POINDEXTER. That is what the section 13 of the bill would provide for.

Secretary McADOO. That is what the bill says, that you shall not turn them back until Congress shall otherwise provide.

Senator CUMMINS. The bill provides otherwise; that is, it provides that during the period of the war or the emergency, and until Congress otherwise directs, I believe.

Senator KELLOGG. No; until Congress shall hereafter order otherwise.

Senator CUMMINS. That is the same thing.

Senator KELLOGG. Yes.

Senator CUMMINS. We need not quarrel about words that mean the same thing. We say to the President that he shall retain the possession of these roads under the war power until Congress authorizes him or directs him to do otherwise.

Secretary McALOO. Senator, I do not agree with your interpretation of the existing law.

Senator CUMMINS. How do you interpret it?

Secretary McALOO. Let me explain. Without further legislation by the Congress, I think the President now has the power to turn these roads back when the emergency is, in his judgment, passed.

Senator CUMMINS. That is what I tried to say a few moments ago.

Secretary McALOO. Yes; I did not understand you to say it. I hope I expressed myself to the same effect. If this bill is passed, it imposes a new condition on the President, because this, as I understand, is what it says:

That the Federal control of transportation systems herein and heretofore provided for shall continue for and during the period of the war.

That would prevent the President from turning them back during the period of the war, even though he thought it was desirable to turn them back.

And until Congress shall thereafter otherwise order.

That leaves the matter within the control of Congress.

Senator CUMMINS. I understand Congress can change that status whenever it desires, but we have all been discussing—which is obvious, I think, to any thoughtful man—conditions which will make it difficult for Congress to change the status by providing a complete system of reorganization and regulation or control, and until Congress does do that thing, if peace should come to-morrow, the President must continue to operate the roads under the powers that you have described, with power not only to direct the movement of cars upon the tracks, but with power to fix rates and exercise any other regulation over general commerce as to him might seem wise.

Secretary McALOO. You say you think that is what his powers now are?

Senator CUMMINS. That would be his power.

The CHAIRMAN. Under this section?

Senator CUMMINS. Under this section.

Secretary McALOO. Under this phraseology, yes. In other words, if you pass the bill in this form, it makes it mandatory that this control continue until Congress shall otherwise determine.

Senator CUMMINS. Is it not perfectly clear, then, that inasmuch as no person would have thought of turning these railroads over to the President or to any other one man free from the obligation of the law in time of peace for the purposes of general commerce that he should now say that at the close of the war these properties shall pass into other hands, Government hands, than the hands of the President?

Secretary McADOO. I think, Senator, that is a thing for Congress to determine for itself. That is a question of policy for you to determine.

Senator CUMMINS. I am asking you as a public man, a man of observation.

Secretary McADOO. I had already expressed myself, I thought, very fully on that. I feel that it is in the public interest that the Congress shall determine upon the return of peace exactly what the status shall be in view of the altered conditions which will confront Congress at that time.

Senator CUMMINS. That may be a year or two years or three years.

Secretary McADOO. May I interrupt you, Senator, to say that I am not arguing for any particular policy in what I have said, and I again repeat that I am merely expressing an opinion for what it may be worth. I am not arguing for anything except that Congress shall not tie its hands in advance of the conditions with which it has to deal, for it might turn out to be very embarrassing and very hurtful to the public interest.

Senator CUMMINS. Of course, we can not legislate at all without tying our hands in a degree, and we wish to look forward and take care of the contingencies that seem likely to arise. We will find at least one of those contingencies, and I do not believe that any considerable number of the people of this country want to grant the management and operation, control and regulation, of all the public carriers in the hands of one man without opportunity for hearing, without rules or regulations to guide his decisions, and all the other safeguards that are usually put in laws of this character; and therefore my question was whether, in your judgment, it would not be wise to provide in this bill not to turn the railroads back, giving them an opportunity, of course, to reconstruct, but to put their management and control into the hands which in time of peace we would naturally invest with that sort of authority.

Secretary McADOO. I do not know what hands you have in mind.

Senator CUMMINS. I have the Interstate Commerce Commission in mind principally.

Secretary McADOO. Of course, I do not know how well it would operate under the control of a commission of that size—the management of the railroads. I am not prepared to say. It would be difficult to get prompt decisions and necessary action, especially in cases of emergency and in war time, if there were nine equal heads in control of the railroads. But I am inclined to think, Senator, as you speak of the people of the country not having confidence——

Senator CUMMINS. No.

Secretary McADOO. I am inclined to think that perhaps the people of the country have a larger measure of confidence in the President than they have in any commission.

Senator CUMMINS. I am not speaking of that. This may continue for 10 years, and we may have other Presidents; but you do not believe, do you, that as a peace regulation the management and control of these properties and their operation should be put into the hands of any man without control of the law?

Secretary McADOO. I do not mean to reflect, in what I am going to say, any lack of confidence in boards or commissions. I think

they do excellent work. But I am frank to say that I would, as an American citizen, feel more confidence during the war period with the systems of railroads of the United States in the hands of any President of the United States, no matter what his political affiliations are, than in the hands of any board. I think the President of the United States, no matter whom he may be or what party he is affiliated with, would discharge that trust with a great deal more effectiveness than any board or commission could do it, and with a greater responsibility to the public. Of course, I am speaking of the war period.

Senator CUMMINS. Why should we have any law at all upon any subject, then? Why not give to some one man the government and control and regulation of all the people of the country in all their relations?

Secretary McADOO. Of course, that is an unjustified deduction from my answer. You are asking me whether I think this particular thing would be better handled by the President of the United States than by a commission. I say I think the President of the United States will handle it better than any commission you could devise.

Senator CUMMINS. But no country in the world that owns and operates its own railroads has done that thing.

Senator KELLOGG. Except Germany.

Senator CUMMINS. No; the Emperor of Germany has nothing more to do with the operation of the railroads of Germany than the President has heretofore had or ought to have had to do with the Interstate Commerce Commission.

Secretary McADOO. So far as my view of the question is concerned, it does not make any difference whether the German Emperor has anything to do with the railroads of that country or whether the other countries handle their railroads in one way or another; I do not think the United States needs to take its pace or set its pace by any other country. We should do what we think should be done and take the experience of the other nations for what it may be worth.

Senator CUMMINS. France does not either. They do not run their railroads through their President.

Secretary McADOO. Even that, Senator, would not alter my view of it.

Senator CUMMINS. Nor Australia nor New Zealand nor Canada.

Secretary McADOO. They may be wrong. I find American methods are sometimes very much better than the methods of other nations, and, so far as I am concerned, I am never afraid when America thinks originally or when she acts upon her own initiative. When I say that I do not mean that we ought not draw on the wisdom and experience of other nations; we should take the benefit of all the experience of other nations that we possibly can in determining a rule of action.

Senator CUMMINS. Do you mean, Mr. Secretary, to advocate the proposal that our railways should be put in the hands of any man. I care not whether he is President or otherwise, with an unlimited unrestrained authority to fix the rates and the practices which should be observed by the carriers, without any standard prescribed by the law as to such rates or practices?

Secretary McADOO. No; I do not advocate that.

Senator CUMMINS. Well, that would be the effect of continuing this control after the war ended, would it not?

Secretary McADOO. I am perfectly willing to see that done until Congress works out the new status, and I think it is better that it should be done. I look upon that as being a temporary status until Congress settles or determines it otherwise.

Senator GORE. This is a hypothetical question that has arisen in my mind, Mr. Secretary. Suppose we should have a President who shared your views, that the President could administer the railroads of the country better than anybody else, and suppose Congress should undertake to turn them back to the Interstate Commerce Commission. If we had a President of that mind he would veto the bill, and it would take two-thirds of Congress to pass it over his veto. We would have this one-man control.

Secretary McADOO. You misunderstand me. I have not said that I thought the President could administer the railroads of the country better than anybody else. I said that the President, during the war period and to meet the emergencies arising therefrom, could, in my judgment, operate the railroads better than any board or commission could possibly do. You know that boards or commissions find it very difficult to make prompt decisions. There is frequently prolonged debate and inaction. Such an organization is not suited to war times. As to your suggestion that the President could veto a bill passed by the Congress, and that it would take a two-thirds vote to pass it over the veto, that is very true; but even that might be the best thing that could happen to the country in some circumstances. Congress takes that chance with respect to every piece of legislation that is put upon the statute books. No existing law can be changed or modified in the event of the President's veto except upon a two-thirds vote of both Houses. We have lived under that provision of the Constitution ever since its adoption, and it has seemed to work well.

Senator GORE. Why not put in the bill that it never shall go back, and let us make it a permanent statute?

Secretary McADOO. You can not bind another Congress. My argument is that nothing you do here is going to bind another Congress. Every Congress that comes in can legislate as it sees fit.

Senator POMERENE. Except in so far as rights may vest under the legislation passed.

Secretary McADOO. Yes; except as to vested rights that may have been created. I think we are engaged in a very academic discussion, if I may say so, and I do not think that my views are helpful so far as those questions are concerned. But I do want to say this, that so far as the repeal or alteration of any existing legislation is concerned, Congress always takes the chance that it will have to override a possible veto of the President by a two-thirds vote. But should that fact deter us from doing the things that are essential to be done in the light of present conditions? There is a great deal of legislation on the statute books to-day that some future Congress may think ought to be repealed, and it might not be easy to repeal it because the President at that time might veto the bill, and a two-thirds majority might not be found. But that is a chance we must take and have always taken.

Senator GORE. Congress might suggest after the war, if it became necessary, to extend this status, and Congress might extend it. By putting in section 13 we might maneuver the situation so that it might take a two-thirds vote. Take the Philippines situation as an illustration in point. We had a point there before they were acquired. One more than a third of the Senate could have defeated the treaty of acquisition. It was insisted by some, however, that we should ratify the treaty, acquire the lands, and consider the disposition of them later on. That maneuvered Congress into a situation where it required a majority of the Senate and a majority of the House and approval by the President to make any disposition of the lands. The same question of strategy may arise in connection with section 13.

Senator TOWNSEND. Then, Mr. Secretary, is not that surplusage in section 13, that it shall continue for and until Congress shall otherwise act?

Secretary McADOO. I do not think it is surplusage. I think it defines the status during the time the railroads are held under this bill.

The CHAIRMAN. The hour of 12 o'clock is here, and I want to ask you this question because I know this is going to be the battle ground for getting this bill through. You spoke a moment ago of conditions that might arise that might make it necessary for the President to continue his control. Why would it not be just as competent for Congress when those conditions arise, to pass a simple resolution, and then we may have our hands tied then rather than now?

Secretary McADOO. But suppose at the time Congress is not in session. Suppose that the necessity for acting arose when you could not act, or suppose when you met you could not pass a resolution extending it because there was a filibuster against it? Or suppose that the two Houses could not agree? Then, you see, the provision would automatically operate and great injury to the public might result. What is the fear about this provision, is it Government ownership or the possibility of Government ownership?

The CHAIRMAN. I think so, frankly. I think so.

Secretary McADOO. All right, if that be the fear, then tell me how you are going to prevent a consideration of Government ownership by putting a one-year limitation in the bill? The question will arise just the same, and you have got to confront it.

Senator CUMMINS. That is not my theory; I will say that.

Secretary McADOO. May I be permitted to make this observation on this question of Government ownership? Why should we allow any specter of that sort to influence action that may be manifestly wise at this time? We must act in the situation from the standpoint of what is wise and what is the sound thing to do now, regardless of speculation about the future. May I say that while we are talking to-day we are having an investigation, I believe, as to why we haven't ships. The reason we have no ships or so few ships is because a number of thoroughly well-intentioned gentlemen in the Congress of the United States, for fear of Government ownership, filibustered to death a shipping bill which was introduced by the administration in September, 1914, to enable the Government to begin then to build an American merchant marine.

Senator KELLOGG. That is not the reason we did not get ships in the last year.

Secretary McADOO. It is the very reason why you have not got ships, if you will permit me to say it, because if that bill had been passed at that time and the Government had begun to build ships, thereby stimulating the building of shipyards and increase of shipyard facilities so that we could have turned out ships promptly and had the increased facilities to turn them out more rapidly at this time, ships would be sailing the ocean to-day under the American flag that will not go upon the waters for some time to come. This fear of Government ownership, this sacred dogma that terrifies a great many people, resulted in nonaction at a time when action was imperatively demanded to protect American interests.

Senator KELLOGG. What has resulted from the inaction in the last six months?

Secretary McADOO. The fact that we did not start in time and that Congress did not give permission in time to begin to build up the shipyards; that the ship bill was filibustered and killed in March, 1915.

Senator POMERENE. I must protest against reverting to an investigation of the shipbuilding yards.

Senator KELLOGG. Secretary McAdoo brought it up.

Secretary McADOO. If you will excuse me, my only point is this: We are again confronted here with the specter of Government ownership, and the fear is expressed that we should not do something that is demanded in the interests of the Nation because it might some day lead to Government ownership. For my part, I say that such specters ought not to be permitted to determine our action.

The CHAIRMAN. Just one word, Mr. Secretary. It is because of the difficulty that has arisen by virtue of that specter that the committee would like to eliminate it as far as possible.

Senator LA FOLLETTE. I protest against the term "specter."

Secretary McADOO. You think it is a reality?

Senator LA FOLLETTE. It is a reality. You will have to meet it, whatever you put in this bill.

The CHAIRMAN. I want you to understand that the reason I said what I did was because we are trying to eliminate the destructive power of that specter. That is the reason.

Secretary McADOO. That is for you to determine, gentlemen.

The CHAIRMAN. The committee stands recessed until 2 o'clock p. m.

(Whereupon, at 12.05 o'clock p. m., a recess was taken until 2 o'clock p. m.)

AFTER RECESS.

The CHAIRMAN. The committee will come to order. In the absence of the witnesses who were here this morning, we will ask Senator Bristow to continue his statement.

STATEMENT OF HON. JOSEPH L. BRISTOW—Resumed.

Mr. BRISTOW. The first feature of the discussion that I should like to refer to is the utter unfairness and unreliability of the book value as a basis for anything. It has been testified, so I have been in-

formed—I was not able to hear it, because the testimony was given before I came, and I have not been able to read it, of course—but it has been contended, so I understand, by representatives of carriers that the book value was a value that they were justified in earning a return on; and the Interstate Commerce Commission, in the Western Advance Rate cases, used the book value at that time, which was something over a year ago, as the best value available.

I want to illustrate how misleading any consideration of the book value of a railroad is as to its real value. Take the Kansas City Southern. In 1898 the balance sheet of that road showed the cost of the property at \$47,000,000, in round numbers, an average of \$60,000 per mile. The road was reorganized in March, 1900—that is, less than two years afterwards—and thereafter the property account showed an invested account of \$76,000,000, writing into the property account of the road some \$29,000,000 by the reorganization that represented no investment of capital at all. This brought the book cost up to \$95,000 a mile. The book value on December 31, 1916, showed the total investment at \$104,000,000. There are of main line 823 miles, a showing on December 31, 1916, of a book investment of \$127,000 a mile of main-line track, or of \$82,000 a mile, including all track, sidetrack, and everything else.

Now, anyone who is at all familiar with the value of railroads can readily see how ridiculous it is to claim that the value of the Kansas City Southern Railroad is \$127,000 a mile. Yet that value has been used in rate cases before the Interstate Commerce Commission by the carrier, claiming a return on that amount. Fortunately the Division of Valuation of the Interstate Commerce Commission, under the valuation law, has made a tentative valuation of the Kansas City Southern Railroad, and it shows that the original cost of the Kansas City Southern Railroad was \$47,000,000, or \$57,000 a mile. That the cost of reproducing anew the Kansas City Southern Railroad, as of June 30, 1914, when this valuation began, was \$48,000,000, or \$58,000 a mile.

SENATOR POMERENE. Do you mean taking into consideration the present value of the right of way?

MR. BRISTOW. Yes; it takes the entire value. The reproduction new, as of June 30, 1914, less depreciation, that is the value of the physical property as it existed at that time; the Division of Valuation placed it at \$40,000,000, or \$49,000 a mile for the main-line track, showing that the book value—the value as shown by the books of the company—is \$78,000 a mile more than it cost. Yet it is contended before this committee that the book value has a right to consideration in fixing the return that a railroad ought to have on its property.

THE CHAIRMAN. What did you say was the estimated value as of 1916?

MR. BRISTOW. The book investment—

THE CHAIRMAN. I mean ascertained by the valuation division?

MR. BRISTOW. That was of June 30, 1914; the value as of that date, in its depreciated conditions, was \$40,000,000, or \$49,000 a mile.

THE CHAIRMAN. That is what they estimated as the value of the physical property?

MR. BRISTOW. Yes, sir.

The CHAIRMAN. And they had the book value as what?

Mr. BRISTOW. \$127,000 a mile.

Senator POMERENE. Are you including in that equipment?

Mr. BRISTOW. I think that is all—equipment and all. Yes; that is the whole thing.

The CHAIRMAN. In both instances?

Mr. BRISTOW. Yes.

Senator ROBINSON. What is the difference, if you can say, between the book value and the original cost, which you have stated, what does it consist of?

Mr. BRISTOW. In these reorganizations they write in. Now the Santa Fe Railroad, when it was reorganized—I think it was in 1896—in order to adjust the securities with the existing value, they wrote in \$102,500,000 that represented nothing at all; it was just written into the value and became part of the book value of the Santa Fe Railroad. In the reorganization of the Kansas City Southern they have done that more than once, because it has been one of those decrepit roads that has struggled along under adverse circumstances, due to its excessive capitalization. It was built by a man who did not have anything, and he went out and got the money the best he could, and it probably cost a good deal more than it would have cost if it had been built by some responsible financial institution that had the money with which to build it.

A contractor, I have been told—I have not the records here to prove it, but I have not any doubt of the accuracy of it—a contractor who wanted a contract for the construction of 20 miles or 50 miles, or whatever it might be, of the Kansas City Southern, if he would take care of a certain amount of the securities which Mr. Stillwell who constructed it wanted to issue, he could get the contract. In many cases construction companies were organized to build a part of the road and they were given a block of securities for building it, and they disposed of the securities for what they could get. That road, when built by the construction company, would be turned over to the railroad company at the face value of the securities issued.

Senator ROBINSON. No matter what the securities actually brought?

Mr. BRISTOW. No matter what the securities actually brought. I have in mind now a little road that was built in the last five years. There was a capitalization of \$35,000 a mile authorized, \$17,500 bonds and \$17,500 of stock. A construction company was organized, consisting of exactly the same individuals as organized the railroad company. The construction company contracted with the railroad company to construct the road for the stocks and the bonds and it proceeded to construct the railroad. The railroad cost somewhere from \$13,000 to \$15,000 a mile to construct. It was turned over then by the construction company to the railroad company, and on the books of the railroad company it stands as a cost of \$35,000 a mile.

There has been a great deal of railroad construction in this country done in that way. So it illustrates that the book value is of no value at all. You have got to know what has been put into the road in order to know what the property is worth or what is the actual cost. So, any statement that is made here based upon book value is entitled to no consideration whatever unless you have some other knowledge as to what the road is worth.

Senator POINDEXTER. I should like to interject there, if you will permit me, that there has been also a good deal of railroad mileage constructed by contractors who either represented or with whom was interested the promoter of the railroad, so that whatever the contractors made was divided with the man who was building the road, and they were paid on the basis of 10 per cent, or some percentage, plus the cost, so that the conditions tended toward expensive cost of construction.

Mr. BRISTOW. There is an interesting observation here that I think it is perfectly proper to make. We hear a great deal about the financial difficulties that the railroads are in, and in order to satisfy myself as to what return the Kansas City Southern, which is one of the poor roads, received during the years—that is, the average return for these three years of 1914, 1915, and 1916—on the value of the property. I secured the following figures: On the book value, of course, the returns were rather small, 3.25 per cent on the book value, that is, the \$127,000 a mile. But on the original cost of the road, that is, the money that was put into it as an investment in 1914 it paid 7.38 per cent after the taxes were deducted. This is all free of taxes. In 1915, 6.52 per cent and in 1916, 7.71 per cent, or an average for the three years of 7.20 per cent. That is the return that the Kansas City Southern during those three years, the last three years excepting 1917, obtained on the money that was invested in the property. I do not think they have got any complaint.

Senator CUMMINS. Did not the commission itself make some reference to the unreliability of book value or investment account some years ago?

Mr. BRISTOW. Oh, yes; Secretary Lane, when he was a member of the commission, said the book value was not worthy of consideration anywhere, and that no reliable court or commission had ever regarded it as worthy of any showing or standing in any case that had been brought.

Senator LA FOLLETTE. I think that was said in the rate case in 1910.

Mr. BRISTOW. In its annual report for 1908 the Interstate Commerce Commission said: "Every balance sheet begins with 'Cost of property,' against which is set a figure which purports to stand for the investment. This is no place to enter upon an extended criticism of this practice of American railways in the matter of their property accounts, nor is such criticism necessary for the purpose in hand. It is sufficient to refer to the well-known fact that no court or commission or accountant nor financial writer would for a moment consider that the present balance-sheet statement purporting to give the cost of property suggests even in a remote degree a reliable measure, either of money invested or of present value."

Now, to illustrate further: The Kansas City Southern is not the only one. I want to refer to a few other roads to illustrate the same principle.

The Chicago & Alton. Here is another interesting illustration as to how the book value goes. On December 31, 1898, the Chicago & Alton Railroad owned 543 miles of road and leased 300 miles. Its book investment of road and equipment was approximately \$33,000,000. On June 30, 1902, the Chicago & Alton Railway Co. was organized. The original company was a "railroad" company. This

railway company owned 57½ miles of road, and it leased that owned by the Chicago & Alton Railroad. The property investment of the Chicago & Alton Railway Co., the new company which owned 57 miles, was then, after the reorganization, shown to be \$61,000,000 or at the rate of over a \$1,000,000 a mile for the 57 miles of the Chicago & Alton Railway.

On June 30, 1915, the Chicago & Alton Railway Co. then consisted of 646 miles of property, which it owned, and leased 327 miles, and the entire property investment was \$121,000,000, making, approximately, \$120,000 a mile, as the book value of the property. Still that is presented here for you gentlemen to consider in determining what is a fair return to these railroads on the property values.

The Erie is another interesting illustration.

The CHAIRMAN. Before you pass from that, what was their earning on this maximum value?

Mr. BRISTOW. I have not the earnings of the Chicago & Alton here, I think, but that can be easily obtained, Senator Smith.

Senator CUMMINS. That is what is known as the Harriman reorganization?

Mr. BRISTOW. The Harriman reorganization of the Alton; that is right. That was discussed quite fully in Interstate Commerce Commission reports at the time.

The Erie Railroad, in 1903, the book investment in the first main track, that is on the main line of the road, was approximately \$150,000 a mile. The Pennsylvania at that time was approximately \$82,000 a mile. In 1916 the book investment of the Erie had increased to approximately \$190,000 a mile and the Pennsylvania to \$140,000 a mile. That illustration is enough to show, when the book value shows that the Erie Railroad was worth \$50,000 a mile more than the Pennsylvania, how reliable such statistics are for any consideration.

Senator POMERENE. Have you made any study of the question, or have you made any statement as to the book value and the market value of the stocks and bonds as compared with the book value?

Mr. BRISTOW. I have on some of the roads. I have on the Kansas City Southern. I do not know whether I have got that with me.

Senator POMERENE. Perhaps I am interrupting your line of thought. I do not want to do that.

Mr. BRISTOW. I made that on the Kansas City Southern and I will give that to you now. I made it also on the Santa Fe, but I do not believe I have that with me. I may have.

The average market value of the securities of the Kansas City Southern for a period of five years I had taken.

Senator CUMMINS. What five years was it?

Mr. BRISTOW. From 1912 to 1916, inclusive.

Senator POINDEXTER. That includes the bonds and the stocks?

Mr. BRISTOW. The bonds and the stocks at their market value. The par value of the bonds and stocks of the Kansas City Southern is \$100,000,000; the market value is \$57,000,000.

Senator POMERENE. You mean the present value?

Mr. BRISTOW. The average market value for five years.

The CHAIRMAN. Is how much?

Mr. BRISTOW. \$57,000,000.

Senator LA FOLLETTE. Up to and including 1916?

Mr. BRISTOW. Yes; from 1912 to 1916, inclusive. That is a value of \$70,000 a mile for the main-line track, or \$45,000 a mile for all tracks. That is what the public was willing to chance it was worth in the investment in its stocks and bonds.

Now, in taking the average value of the stock and bonds of a railroad, the poorer railroad that has large capitalization gets a higher value than a good railroad; that is, a higher proportionate value than a good railroad that is not so excessively capitalized, because the speculators on the market will take a chance on paying 10, 11, or 12 cents on the dollar on a stock that is floating about, thinking it may go up a cent or two and they can cash in a little profit on it, than where they have got to pay \$150, \$175, or \$200, as they did at one time on the Burlington and as they have at times on other roads. There are a great many of these stock investors, or sometimes we unkindly say "gamblers," who will take the chances on investing in these cheap stocks, so that they will average up higher in proportion to the real value of the road. And that is true of the Kansas City Southern.

Senator POMERENE, I think, inquired as to the book investment of the Santa Fe. The Santa Fe is one of the great systems and one of the very successful ones. The book investment in railroad property on June 30, 1916, was \$699,841,000, approximately \$700,000,000. First main-line track consisted of 11,270 miles, making the book investment of the Santa Fe on the main track \$62,000 a mile, and that was after \$102,500,000 had been written in without any consideration whatever.

The book value of the Kansas City Southern shows it is \$127,000 a mile, and the book value shows the Santa Fe is worth \$62,000 a mile.

Senator POINDEXTER. I understand you to say that the \$127,000 a mile on the Kansas City Southern includes the entire mileage, the branch lines and sidetracks?

Mr. BRISTOW. That includes the main line; it is the same comparison, that \$127,000 a mile main line Kansas City Southern and \$62,000 a mile main line Santa Fe, including all branches, sidetracks, etc., of the Kansas City Southern, its book value is \$82,000 a mile and of the Santa Fe is \$42,000 a mile.

The market value of the capital obligations of the Santa Fe, par value, was \$640,000,000 of Santa Fe stocks and bonds. The market value was \$623,000,000.

Senator POMERENE. And the book value \$699,000,000?

Mr. BRISTOW. Yes. Reduced to miles, it shows the market value of the Santa Fe obligations was \$50,000 a mile for main line. That includes first track. Where it is double track I count the mile; if it is double track, as from Chicago to Kansas City, I count that as first-line track. When you take all of the tracks—the sidetrack, the double track, or the quadruple track, or whatever they are—the market value of the Santa Fe shows \$38,000 a mile. The Santa Fe has a good many branch lines that are not valuable or expensive in construction, which brings down its book value, its market value, to a less figure than some roads that have less branch lines and a larger proportion of main line.

Senator POINDEXTER. What is your judgment as to the approximate correctness of the market value of the securities as representing the actual value of railroads under ordinary normal conditions?

Mr. BRISTOW. I think it is more than the actual value, judging from the investigations made by the Division of Valuation of the Interstate Commerce Commission, but not nearly so excessive as it might be. An opinion on that, Senator Poindexter, would be very superficial, and I would not want it given great weight without I make fuller investigation than I have been able to make. The Division of Valuation has reported very few roads. The largest one on which it has made a tentative report is the Kansas City Southern. It has made a tentative report on a number of smaller lines.

I think that the average value for a period of five years of the stocks and bonds of a railroad will amount to more than the Interstate Commerce Commission will find that they are worth, but it would not be very excessive over the findings indicated by what has already been reported, probably from one to three billion dollars. Say, if the Division of Valuation of the Interstate Commerce Commission should find the roads worth \$13,000,000,000 actually, my guess is—and it is purely a guess, because you can do nothing else except guess; Judge Prouty would have the best judgment on that of any man living, because he knows more about it than anybody else—but my guess would be that the market value would probably be two billions more than that. I may be mistaken in that, but that would be my estimate.

Senator POINDEXTER. Has a subpoena been issued for Judge Prouty?

The CHAIRMAN. No.

Senator POINDEXTER. I would like to have one issued for him.

The CHAIRMAN. I think it has been requested that he come.

Commissioner ANDERSON. May I say a word there?

The CHAIRMAN. Yes.

Commissioner ANDERSON. It may be interesting to say to the Senator that I called upon Judge Prouty in my early investigation and asked him if he had got far enough in valuations so as to give me any help at all. He said, though, there would not be any use to base any calculations at all upon what work had thus far been done by the valuation board; that we must find some other basis.

The CHAIRMAN. I should like to state in this connection that I called Judge Prouty up and asked him if he had any information at all along the line of the physical valuation of the roads that might be of value to the committee or that might indicate information of value to the committee. He said he had none at all.

Senator POINDEXTER. I think, however, his views on some other features of the case would be valuable.

Senator CUMMINS. He knows more than anybody else whether the book value or investment account of the railways is a safe basis for computing returns. I am sure he will have some very interesting and valuable information on that subject.

Commissioner ANDERSON. It might be interesting in that connection, Senator, to say that I had the Bureau of Statistics give me a lot of figures upon the then market value, upon which I based some rough calculations as to the then market value of the railroad securities, and I came out around \$13,000,000,000. It was pretty rough. After that time they went down somewhat.

Senator CUMMINS. Did you include the period of the last six or eight months?

Commissioner ANDERSON. It was the market value around that time. I think it was the latter part of November or early December I had these figures. Then the securities went off until the proclamation was made and then they went up again.

Senator CUMMINS. You brought it down to December of this year?

Commissioner ANDERSON. Yes.

Mr. BRISTOW. That was not an average, that was the value at that time, at the time the quotations were made?

Commissioner ANDERSON. Yes, it was the then market value, roughly.

Mr. BRISTOW. This estimate of mine was the five-year value and that would be more than the market value in December.

Commissioner ANDERSON. Oh, yes; substantially more.

Mr. BRISTOW. It would not be far from \$15,000,000,000, taking the five years.

Commissioner ANDERSON. Let me correct this. Except the securities have increased somewhat in amount, so there is a larger volume of securities to be valued in December of this year than you would have for your average, but the market value would be higher for the five-year average, in my opinion, than at the time I made this rough estimate.

The CHAIRMAN. You are giving these figures, Mr. Bristow, to illustrate how the public would be paying more than they justly ought to pay in thus fixing the returns of these corporations. I want to suggest this, so that you may make some statement in reference to it. The original cost of a railroad may be approximately the same in different parts of the country and different localities, but the earning power of the road is determined by the volume of traffic and freight carried. Now, the value of the stocks and bonds bear a ratio to the earning capacity of that road, without any additional investment, without any original investment. I should like to hear you as to how you would adjust that in raising rates.

Senator ROBINSON. In your question you assume a statement that Mr. Kruttschnitt almost proved to be incorrect. He took the position and cited illustrations that seemed to support him, to the effect that the earning capacity of a road had no relation whatever to the market value of its stock. And I remember he cited one instance of one road, I think it was the Southern Pacific, when its earning capacity was the highest its stocks fell to the lowest scale that they reached during a period of years, and he maintained and cited that, and other cases, as an illustration of the fact, or what he asserted to be the fact, that the market value of the stocks bears no consistent relation to the earnings of the road.

The CHAIRMAN. That might be true in market manipulation, but as a business proposition any man who desires to invest in railroad stock would certainly feel more secure if he got it around a reasonable figure, based upon the earning capacity of that road, than he would upon one whose earning capacity was less, or doubtful.

Mr. BRISTOW. I think, Senator Robinson, that Mr. Kruttschnitt's statement might be true, due to some market conditions. The earning conditions might be great, but there might be some market conditions that would make stocks low. That would apply not only to

railroad stocks, but to others, as well. I think if you will take an average of the market values of stocks over a number of years, you will find that the earnings do influence the market value.

Senator ROBINSON. I should think that would be true, and I do not think Mr. Kruttschnitt controverted that the earnings do have some influence upon the market price, but the position which he took, and he impressed me that he had great information upon the subject, was that the market value of stocks is not a safe criterion to base a question of the ascertainment of just compensation upon, for the reason that for some reason or other, or for many reasons, the market value does not bear a consistent or appropriate relation to the earning capacity of the road, and he cited many illustrations which, up to the present, have not been contradicted.

Senator CUMMINS. The fallacy in Mr. Kruttschnitt's statement which does not impeach the correctness of any specific instance that he gave is this: If you take the market quotations at a given time, one market quotation, no one knows what the influences are that surround it, and it seems to be entirely out of harmony with the general earning power of the road that issues the stock, but if you will take the market quotations of the roads which have had big earnings and have paid big dividends during those years, throughout a year and throughout a series of years, you will find that the public estimate of the value of those stocks has been remarkably uniform.

Senator ROBINSON. Have you done that?

Senator CUMMINS. I have; yes, sir.

Senator LA FOLLETTE. He cited his own system, I think, as the best evidence of the point that he was making, and he showed that the earning capacity was not always the measure of the dividends. They had paid on that system 6 per cent dividends right along for years, and carried to surplus the excess, and the point that he made was that the stock market went no further than the dividends paid in making their estimate of the value of the stock for investment.

Senator ROBINSON. Yes; and he also pointed out the fact that a road that was making comparatively small earnings and declaring large dividends on its stock on the market was influenced by that fact, whereas the road that was declaring a regular dividend and making larger earnings might have its stock depressed.

Senator CUMMINS. I think that is true in a measure, undoubtedly.

Senator ROBINSON. And he did make the statement, at least it was plainly inferential from his statement, that that condition would be found to prevail over any period that might be taken. He laid down the proposition and maintained it with force that the market value of the stock bears no consistent relation to the earning power of the road.

Senator POMERENE. His figures were these, as I recall: That when the book valuation of the entire plant was \$800,000,000, the stock valuations were \$55 greater than they were at a later period after \$400,000,000 of money had been put into the plant.

Senator ROBINSON. That is true.

Mr. BRISTOW. Of course, I did not hear the testimony of Mr. Kruttschnitt, and I could not make any statement as to what interpretation should be put on it, but any statement that starts with the book value as a basis is of little value unless you know something

about what the actual value is. It is so absolutely unreliable as a basis that it should be disregarded, in my opinion, and start from another basis.

I think you will find if you take the average market value over a period of years of the stocks and bonds of any railroad that its earnings are a very important factor, but not a conclusive factor. There are other things that will control it. That is, if it is highly capitalized so that it has not got a value behind it, that will influence it. The earnings may be cut off; they may be too much; it may be enjoying excessive rates for the service rendered, and a reduction in the earnings would lessen the accumulated value of the property. There are many factors that should be taken into consideration.

Senator CUMMINS. It impressed me very queerly that Mr. Kruttschnitt should one time say that the earnings of a property had no material effect upon the market value of the stock, and in the next breath say that the rates of the company should be increased in order to make the stock valuable in the market and attractive to the public. That has been the foundation for every application for increase in rates, that they must earn more money in order to stabilize their stocks and securities and make them saleable. I can not help but be impressed with that inconsistency, or seeming inconsistency.

Mr. BRISTOW. That, I believe, is all that I have to say as to book value, because the illustrations might be multiplied indefinitely, and they will all show the same inconsistency.

The CHAIRMAN. Senator Bristow, have you any tables, in working this out, to show for class 1 railroads the difference in the totals of their book value and what is, by whatever method you have worked it out, their real or approximate value?

Mr. BRISTOW. No; I have not, Senator Smith. It is easy to ascertain the book value from the records of the Interstate Commerce Commission. It is exceedingly difficult to get the average value of the stock for a period of years, because we have to take the daily quotations and average them up, and there are all kinds of quotations, and it is a big job. I had it worked out here on just one or two railroads in order to get an idea. Then, the real value of these railroads has not been ascertained by the Interstate Commerce Commission as yet. The inventories are practically all taken, I understand, but the applying of the unit cost and value to the details is an enormously large undertaking. It would be very difficult to get that on class 1 railroads at this time. You can work out, and there are data available to work out, what is the average value of the stocks during the five years. That can be done and it is purely a question of clerical work. The Interstate Commerce Commission could provide you with that, or there are accountants who could work it out.

Senator ROBINSON. Do you suggest that as a fair basis for just compensation?

Mr. BRISTOW. I think it is very much better than any that has been suggested.

Senator ROBINSON. You think that is better than the one contemplated in the bill?

Mr. BRISTOW. Oh, very much, in my judgment; yes, sir.

The CHAIRMAN. Senator Bristow, I wanted to ask you this question: Under the present rates allowed by the Interstate Commerce

Commission, are there roads that are really of prime importance that under the rates allowed are not making more upon their capital than is reasonable?

Mr. BRISTOW. Oh, there are roads that are; yes, sir.

The CHAIRMAN. The question in my mind is this: If that be true, how, then, would you fix the uniform rate without giving to certain roads a vast income on their real capital and let these other roads live at all?

Mr. BRISTOW. You can not.

Senator UNDERWOOD. I did not understand your statement of a moment ago, Senator Bristow, and I will ask you to pardon me if I will ask you to repeat it. You said there was a better basis for use to determine compensation which should be paid these railroads than the one fixed in the bill. Will you mind repeating what you mean by that?

Mr. BRISTOW. I think most any basis would be better, Senator. If you are going into the guaranty business, guarantee a return on the market value of their securities, that would be very much better than this, because this will leave some of the railroads bankrupt, without anything. This will not give them enough to pay their interest charges on their bonded debt, and it will pay some of them 25 per cent on their capital stock. I will demonstrate that in a few minutes by my figures.

Senator UNDERWOOD. Have you got a suggestion as to what you think is the best method if we take over the railroads; and conceding the proposition that if they are taken over, they must be given just compensation, either permanently or temporary, what is your suggestion?

Mr. BRISTOW. I am going to make a suggestion to you, Senator. I do not know whether it is the best or not, but it is the best that I can think out. I do not know whether it is of much value or not, but I give it to you for whatever it is worth.

Senator UNDERWOOD. If you have not approached that part of your argument yet, I do not want to interrupt you, but I did not clearly understand your answer a moment ago.

Mr. BRISTOW. If you are going to take the railroads as this bill provides we shall, and to guarantee—now, I am not advocating that, Senator, but if that is to be done, then I think to guarantee a return on the average value of their stocks and bonds will be better than this. I think to guarantee a return on the value of the property that is used would be very much better than this.

Senator UNDERWOOD. Is that ascertainable at the present time?

Mr. BRISTOW. No; it is not ascertainable accurately. The best data is the average value of the securities, in my judgment. That is the best available data at this time.

Now I come to the compensation; but before going into that discussion I have been disturbed somewhat in my efforts to furnish the committee some information as to a basis to start from.

My understanding was that the President had taken over all the railroads so as to unify the transportation system of the United States. That was, I thought, the object or one of the objects in this action—so that they could all be used indiscriminately in every way, large or small, successful or unsuccessful—and it seems now that that

was a mistake, that they are not all to be taken over; but we have not any information as to what ones are to be taken over. What is a short line? What is a long line? What is a system? Is the Kansas City Southern a system? I do not know.

Senator UNDERWOOD. We do not know. We have no information. I understand from officers of the Orient that it has been notified that it is not to be taken. I think it is between 600 and 700 miles long, if I remember rightly. I do not remember the exact mileage.

The CHAIRMAN. What road was that, Senator?

Senator UNDERWOOD. The Orient.

Senator ROBINSON. Where is that?

Mr. BRISTOW. It runs from Wichita, Kans., to Mexico, projected to Kansas City from Wichita, but has not been constructed.

Senator ROBINSON. Do you mean Mexico City?

Mr. BRISTOW. Started for Topolobampo, on the Pacific coast, but it did not get any farther than Mexico, except there is constructed some mileage down in Mexico.

Senator UNDERWOOD. A gentleman was here the other day testifying with reference to it.

Mr. BRISTOW. Mr. De Bernardi, the general manager, was here.

Senator CUMMINS. He spoke for the road.

Mr. BRISTOW. So that in discussing this compensation, of course we are more or less at sea, because we do not know what roads are to be compensated or are to be taken. I think the system suggested is wrong. I think it is excessive. I think it provides excessive compensation for many of the roads.

I have had worked out here a list of 25 roads or systems that I suppose will be included, giving the average rate of return upon the common stock for the three-year period from 1915 to 1917, inclusive, that we are guaranteeing. That is, after the interest on the bonds is paid, and after the guaranteed dividends on preferred stock have been paid and the taxes have been paid, the Government by this bill guarantees the following rates on the common stock of the railroads, as I name them:

The Atchison, Topeka & Santa Fe is guaranteed a return of 12.33 per cent on the common stock.

The Union Pacific System, 14.76 per cent.

The Southern Pacific System, 11.66 per cent.

The Chicago, Milwaukee & St. Paul, 5.75 per cent.

The Chicago, Burlington & Quincy, 25.16 per cent.

The Chicago & North Western, 10.99 per cent.

The Great Northern, 9.67 per cent.

The Northern Pacific, 9.75 per cent.

The Minneapolis, St. Paul & Sault Ste. Marie, 13.65 per cent.

The Chicago, St. Paul & Omaha, 10.74 per cent.

The Pennsylvania System, 10.63 per cent.

The New York Central Lines, 13.07 per cent.

The Baltimore & Ohio, 6.55 per cent.

The Reading System, 11.64 per cent.

The Delaware, Lackawanna & Western, 20.02 per cent.

The Lehigh Valley, 11.31 per cent.

The Central Railroad of New Jersey, 19.49 per cent.

The Delaware & Hudson, 11.38 per cent.

The Illinois Central, 10.82 per cent.

The Louisville & Nashville, 16.14 per cent.

The Norfolk & Western, 13.83 per cent.

The Atlantic Coast Line, 10.49 per cent.

The Central of Georgia, 21.62 per cent.

The Nashville, Chattanooga & St. Louis, 12.77 per cent.

The Cincinnati, New Orleans & Texas Pacific, 69.60 per cent.

And the average of the 25 roads named, or the systems named, is 12.02 per cent.

Senator POINDEXTER. Did you have in the list the St. Paul?

Mr. BRISTOW. Yes; that is 5.75 per cent.

Senator POINDEXTER. The Southern Railroad?

Mr. BRISTOW. No; the Southern Railroad is not in. That probably would not pay nearly that much. I have not looked that up.

Senator CUMMINS. What is the total mileage of those roads?

Mr. BRISTOW. The total mileage of those roads is 112,000 miles, about half of the mileage of the railroads of the United States.

Commissioner ANDERSON. Mr. Chairman, may I inquire whether war taxes have been taken out before those computations were made?

Mr. BRISTOW. No.

Commissioner ANDERSON. Then, you have not made any computation at all as to how much war taxes would reduce those returns on stock?

Mr. BRISTOW. No. I think they ought to pay war taxes the same as anybody else.

Commissioner ANDERSON. Are war taxes taken out of the standard return before you reached those dividends, was my question?

Mr. BRISTOW. This includes the operating expenses, the taxes other than war taxes, the dividends on preferred stock, and the interest on bonded obligations and debts.

Commissioner ANDERSON. That does not deduct the war taxes?

Mr. BRISTOW. That does not deduct the war taxes.

Commissioner ANDERSON. Mr. Chairman, if the committee would like, I will be glad to take that sheet and turn it over to the Bureau of Statistics and see how they would come out deducting the war taxes, and whether they agree with the computations. If you regard it as material, I would like to have it done for you.

Senator UNDERWOOD. The war taxes would not amount to a great deal on that sheet.

Senator POINDEXTER. Is there any objection to that being done?

The CHAIRMAN. The request that you made was that this table be submitted to the statistical board to work out and see if they verify those figures?

Commissioner ANDERSON. My suggestion was that if the committee cared for it I would take the tables of Senator Bristow and have our Bureau of Statistics work it out to see whether they reach the same results, or approximately the same results.

Senator POINDEXTER. I understood, also, that you will give us the results of the deduction of the war taxes?

Commissioner ANDERSON. Yes.

The CHAIRMAN. See what conclusion they arrive at, taking the same data that he did, and then also deducting the war taxes.

Without objection, that will be done.

Mr. BRISTOW. I have not the slightest objection to that. I will have a copy made and furnished to you, Commissioner Anderson, if that will be satisfactory. Those roads, of course—many of them—would be compensated far beyond reason. Now, there are other systems that I suppose will be taken in where the guaranteed returns would not pay the interest on their bonded obligations. The Missouri, Kansas & Texas is one. That is a road that runs from St. Louis down into the Southwest—into Texas and through Oklahoma, Arkansas, Kansas, and Missouri. The Missouri Pacific is another. I do not believe that the compensation submitted here would pay the interest obligations of the Missouri Pacific Railroad. It might pay the interest obligations on the Rock Island, but it would pay it a very small return.

Senator POINDEXTER. My understanding is that the compensation proposed in this bill is the earning after the interest obligations have been paid. The interest obligations are included in the expense.

Mr. BRISTOW. Yes; there would not be anything left.

Senator POINDEXTER. There would not be anything at all left.

Mr. BRISTOW. For the Missouri, Kansas & Texas. There might be a little left for the Rock Island, but there are a number of systems that their returns guaranteed would not pay the interest obligations.

Senator POINDEXTER. There would not be any return at all, then. They are not guaranteed.

Mr. BRISTOW. They get nothing.

Mr. THOM. I think that is a mistake, Senator. The interest is not deducted in these deductions before arriving at the standard return under this bill.

Senator KELLOGG. No; not under the bill.

Mr. BRISTOW. Let me understand that. I may have misunderstood this bill. This bill, as I understand it, guarantees to the railroads an amount as a net return of the average amount earned during the three fiscal years 1915, 1916, and 1917, or a net return of approximately \$946,000,000.

Commissioner ANDERSON. About \$935,000,000, we figure it.

Mr. BRISTOW. There is not much difference, considering the amounts that are involved. That guarantees to these railroads an average income of \$946,000,000. I will use the \$946,000,000, for it is the term that I have here. That was the amount ascertained by the accountants that I had go over it. Then, take these individual roads that are a part of the railway system of the United States, take their average return for the three years, and deduct it from the interest on their bonded obligations—

Mr. THOM. No, Senator; I was not talking of that. Senator Poindexter suggested that under the bill among the deductions, before arriving at railway operating income, interest was deducted. I merely called his attention to the fact that interest is not deducted.

Mr. BRISTOW. That is correct.

Senator POINDEXTER. It really does not make a great deal of difference because it would have to be paid anyhow, so it is just a question of the ultimate result.

Mr. THOM. It would have to be paid out of what comes to the company.

Mr. BRISTOW. Out of what comes to the company, after the interest is paid.

Senator ROBINSON. Have you taken into account any reserve fund or fund for maintenance or depreciation or surplus?

Mr. BRISTOW. No; the Government guarantees that. The Government by this bill guarantees to maintain these properties and to provide for proper depreciation funds.

Senator KELLOGG. But these companies have not paid dividends as large as that.

Mr. BRISTOW. No; they have not paid it because——

Senator KELLOGG (interposing). Just wait a moment.

Senator CUMMINS. The companies that he is speaking of have mainly paid dividends.

Senator KELLOGG. But not as large as that.

Mr. BRISTOW. Not as large as this.

Senator KELLOGG. I do not say they have not paid dividends, but they have not paid dividends to the extent of the figures you gave.

Mr. BRISTOW. No.

Senator KELLOGG. Those figures take in the entire amount of earnings over and above the interest on their bonds and applies it to their stock.

Mr. BRISTOW. The interest on their bonds and dividends on preferred stock and applies it to the common stock.

Senator KELLOGG. Where they have preferred stock, that is taken out first?

Mr. BRISTOW. Yes; that is right.

Senator KELLOGG. But those companies did not pay dividends of that size.

Mr. BRISTOW. No.

Senator KELLOGG. And this bill does not permit them to pay any dividends above those they have paid for the average of the three years.

Mr. BRISTOW. It guarantees to them——

Senator KELLOGG (interposing). Wait a moment. I am coming to that. Of course, it guarantees to them.

Mr. BRISTOW. Yes.

Senator KELLOGG. Now, these companies have used the balance of their funds for the improvement of their properties generally.

Mr. BRISTOW. Or put it into surplus.

Senator KELLOGG. Surplus is invested in property in nearly every case.

Mr. BRISTOW. Some of it is; most of it.

Senator KELLOGG. Most of it is or working capital.

Mr. BRISTOW. No; it is not working capital. It is surplus. I have some data here.

Senator KELLOGG. But, as a general thing, the surplus of the companies is invested in the property.

Mr. BRISTOW. As a rule a part of it is. Take the Burlington, which gets the largest, except the Cincinnati road, the road owned by the city of Cincinnati, which has rather a phenomenal situation. As I remember it, it cost something over \$5,000,000 and it is leased for something over \$1,000,000 a year net.

Senator KELLOGG. That is the Cincinnati road?

Mr. BRISTOW. Yes; and the company that leases it made 69 per cent on the value of the property during the last three years per annum

and paid the city of Cincinnati about 20 per cent of the cost of the road besides. That is an anomalous thing.

Senator KELLOGG. There are a few of those cases, of course.

Mr. BRISTOW. But take the surplus of the Burlington, which is probably the most successful of any of the roads that we are dealing with, the book investment of the Burlington as shown by its books is \$447,000,000 and the stocks and bonds outstanding is \$299,000,000. I am just using the round numbers. That leaves a book investment from surplus earnings of over \$150,000,000.

Senator KELLOGG. What is the capital stock?

Senator CUMMINS. It is \$109,000,000.

Mr. BRISTOW. I have that somewhere, but I do not have it just now.

Senator KELLOGG. That wants to come out of the surplus, of course.

Mr. BRISTOW. I have included the capital stock, the stock and bonds is \$299,000,000. The book investment is \$447,000,000.

Senator POINDEXTER. Is that par value of the stock and bonds?

Mr. BRISTOW. That is par value; yes, sir, showing that during recent years the Burlington has put \$150,000,000 of its earnings into capital investment. During that time it has paid eight per cent on its stock. Here is a road that has met every obligation of maintenance, paid all of its interest obligations, paid eight per cent dividends on its common stock, and I think in 10 years, though I would not be certain as to the years, it has put from earnings \$150,000,000 into this property. Its stock is worth about 200. It has been made valuable, because there has been poured into the company this vast sum that came from the public in earnings.

Since the Government by this bill guarantees that the property will be adequately maintained, that there will be set aside an adequate amount for depreciation, and in addition to that these returns are guaranteed, you are guaranteeing to the stockholders of these roads the rate of interest that I have indicated here on this sheet.

Senator CUMMINS. The stock of that company is all entirely owned, or substantially owned, by the Northern Pacific and the Great Northern.

Mr. BRISTOW. I think it is all owned by the Northern Pacific and the Great Northern. So you are guaranteeing them 25 per cent dividends on their investment in the Burlington road. I do not think that is right.

Senator UNDERWOOD. Senator, let me ask you a question right there. I am asking it for information and not as an expression of an opinion because I have refrained from reaching an opinion yet. I want to hear the testimony first. As I understand this case, we have taken over the roads, or some of them, probably the ones you have referred to. We have either got to pay, in the last analysis, for the value of the roads, that is, the value of the property, or a fair rental value, depending on the way we take it, whether we take it permanently or temporarily. That is a question that does not address itself to this committee, or the Congress. In the last analysis, it addresses itself to the Court of Claims or some other court to determine what that rental value, or permanent value, is. Is not that true?

Mr. BRISTOW. Yes; unless there is an agreement made.

Senator UNDERWOOD. That is true. Now, if we make an agreement it stands to reason that the railroads are not likely to accept an agreement from this committee that is less than what they can obtain by judgment in the Court of Claims, or materially less.

Mr. BRISTOW. No; they would not accept probably much less than they could get.

Senator UNDERWOOD. So that we are sailing between the Scylla and the Charybdis, the taking of the roads on the one hand and what the court will ultimately find as a reasonable and just compensation on the other, trying to work out a method by which the President can reach an agreement without going to the Court of Claims, and to that extent our hands are tied, are they not?

Mr. BRISTOW. Senator Underwood, I do not think so. You have got to go to the Court of Claims on a number of these, anyway. The Missouri Pacific—I do not know whether it is included or not, and I do not know what the owners of that road would do, but I am very confident from the investigation that I have made that the guarantee which the Missouri Pacific gets will not pay much above the interest on its bonded indebtedness, and it will be forced into the hands of receivers if it only gets what it is guaranteed.

Again, it just came out a short time ago, and I take it for granted that the owners will not accept any such a guarantee that will bring about that result, and that they will go to the Court of Claims for more pay.

Now, what will the Missouri Pacific get? The Court of Claims must determine. How many other roads similiary situated are there? The Missouri, Kansas & Texas can not accept the guarantee. It will be indefinitely continued in the hands of receivers. It is in the hands of receivers now. Its interest obligations are more than the guarantee will be. What is the Government going to pay it if it is taken? I do not think we know what the expense will be after all of these roads that may be taken over are ultimately satisfied.

Secretary McAdoo this morning thought it would not amount to much. I take it for granted, with his multiplicity of duties, he can not have looked into it as one who is engaged in this kind of business, and that he did not have in mind all the details. It seems to me that if you take into consideration the numerous roads that will make demand upon the Government for additional compensation, the amount over and above the \$935,000,000, or \$946,000,000, may be very large that the Government will stand for and is under obligation to pay.

It does not seem to me that it is good business for the Government to guarantee to one road 25 per cent interest on its capital stock because it earned that, and then go to other roads and take out of the Public Treasury an amount of money to make up earnings which they did not have because of circumstances of various kinds.

Senator UNDERWOOD. I agree with you about that proposition. It does not seem to me to be good business, or fair to the owners of the property, the ultimate owners of all the railroads, but we find ourselves in an embarrassing position, where we have got the roads on our hands on one side and the court on the other to fix what they will hold is just compensation for them, and we have got to sail between those two points. What can we do?

Mr. BRISTOW. Senator, has it ever occurred to you that it might be well to guarantee to these roads the dividends that they have paid their stockholders, and no more?

Senator UNDERWOOD. But suppose they will not take that! We can not put any limitation upon what the court will hold.

Mr. BRISTOW. Does the Government have to pay them what they want?

Senator UNDERWOOD. No; I do not think that; but the Government certainly has to pay them approximately what the Court of Claims will hold is just compensation. I think you will agree with that, will you not?

Mr. BRISTOW. I think so, and I think if you are going to do that with part of them that it would be better to do it with all of them. If you guarantee such returns as some of these roads will get and then leave it to the Court of Claims as to certain of the others to get what they can, where the guarantee is not sufficient to meet their obligations.

Senator UNDERWOOD. Do you think we had better leave it all to the Court of Claims?

Mr. BRISTOW. I think so. That is an offhand judgment that comes to me now, but the other is so bad that I am willing to do almost anything not to do that.

Senator POMERENE. Senator, let me ask you a question along the line of what Senator Underwood has been asking you, because it is a matter that has troubled me for a good while. Assume, for the sake of the argument now, that the Government is going to take over the title to this property, having in mind the Government ownership and Government control, necessarily these roads are entitled, when the Government does take that property over, to have fixed a fair value, a fair compensation. Now, suppose that fair-minded men would agree that this property was worth \$200 for every share of the par value of \$100. Do you have any doubt but that the court would fix the value at \$200?

Mr. BRISTOW. No.

Senator POMERENE. Then let us go a step further.

Mr. BRISTOW. First, Senator Pomerene, excuse me. I want to qualify that. The Burlington is the only one I have in mind now that would at all meet the illustration you make. The Burlington has put \$150,000,000 from earnings into its capital investment during recent years and paid 8 per cent dividends. Now, it has not been decided, I do not think, although I may be mistaken in this, because I am not a lawyer, but there are plenty of very able lawyers here who will correct me if I am wrong, that the railroads are entitled to earn on the value of the excess earnings that have gone into the property—that is, that part which the public itself has contributed over and above a fair return for the use of the capital invested. I would not want to commit myself to the proposition that the Government should pay that. I want to leave that open.

Senator POMERENE. I am not determining a question as to what it should be, but I am trying to determine the question as to what it would have to pay under our Constitution and laws here if we were taking that property over.

Mr. BRISTOW. You would have to pay the value of that property as ascertained by legal procedure.

Senator POINDEXTER. Due process of law.

Mr. BRISTOW. Yes.

Senator POMERENE. If that was \$200 per share, that would be \$200.

Mr. BRISTOW. Yes, sir.

Senator POMERENE. That the Government would have to pay.

Mr. BRISTOW. Yes, sir.

Senator POMERENS. Suppose in the mind of fair-minded men now that that property was in reality as of to-day earning 20 per cent on the capital stock, and you and I, after investigating, would have to agree that it was fairly worth that. Do you not think the court would require us to pay that?

Mr. BRISTOW. That would be equivalent to 10 per cent on the investment.

Senator POMERENE. Yes.

Mr. BRISTOW. Because the stock was worth \$200.

Senator POMERENE. Yes.

Mr. BRISTOW. Surely; yes, sir.

Senator POMERENE. Must we not take that fact into consideration?

Mr. BRISTOW. I think so; yes.

Senator POMERENE. In determining what would be a fair compensation here?

Mr. BRISTOW. Yes.

Senator POMERENE. There is another question that may come up. It may be that that road is earning more than it should earn, and it might be that that question could be determined by readjusting the rates of traffic, etc., but that is a different proposition. We are confronted here by, as Senator Underwood has said, a legal difficulty.

Senator CUMMINS. But, Senator Bristow, the courts have never decided directly, at any rate, that a public utility company is entitled to the value of the property, that part of the value of the property which has been contributed by excess earnings.

Mr. BRISTOW. That has been my understanding, although I am not a lawyer. I do not know about those things.

Senator CUMMINS. I, for one, do not think that, conclusively, anyhow, the value of a property of that kind is determined by capitalizing its earnings.

Mr. BRISTOW. I do not think so either. I do not think it ought to be. The Pennsylvania Railroad during the last 10 years has put \$350,000,000 from earnings into capital, into betterments and extensions.

Senator KELLOGG. Not in stock.

Mr. BRISTOW. Not into stock. Three hundred and fifty million dollars in 10 years has gone into the capital investment in the road, and all this time it has paid the regular dividends. I do not think that it is fair to charge the public a return on that which the public gives over and above what is a fair rate, and I might say here that I do not believe that because the Pennsylvania Railroad at this time may not be earning a return on its investment that the rates ought to be increased so that it may earn that return during the few depressing months that it is now going through.

It has a surplus of \$350,000,000, which in 10 years it has accumulated and put into property, and it has not any just right to ask

an increased rate until it has exhausted that surplus by increasing capital obligations against it, in order to pay any deficit that may come from operating expenses at this time or during a period of depression.

A railroad ought not to be exempted from the ordinary rules, if it is to run as a private institution, which business men must follow, and that is during prosperous years to prepare to tide over an unprosperous one. If they are given enough to pay them a fair return on their invested property and then they have a surplus, and it is seen fit to let them have it, as soon as the depression comes and that return fails so that dividends may fail they will be justified in going into the surplus, whether it is in the banks drawing interest or in property representing investment, and capitalizing that to make up the deficit during the dull years. I think it ought to be required to do it.

Senator CUMMINS. Speaking of the Pennsylvania, do you remember how much it has put into net earnings in addition to paying its dividends and in addition to the \$350,000,000 it has put into property? What is its present surplus, in other words?

Mr. BRISTOW. I have got it here somewhere, Senator, but I do not remember now. It is quite a large amount, I know that.

Senator CUMMINS. It is fifty or sixty millions?

Mr. BRISTOW. Yes; I think it is fifty or sixty millions. It has a surplus of approximately a hundred millions, I think. I do not know. I have it here and I will find it during the discussion.

Mr. THOM. Mr. Chairman, we do not think, of course, that is pertinent or valuable to a consideration of this case, but I think Senator Bristow's figures are erroneous.

Mr. BRISTOW. In what respect?

Mr. THOM. I understood you to say that \$350,000,000 out of earnings had been put into property in 10 years.

Mr. BRISTOW. Yes.

Mr. THOM. I understand that is not the fact.

Mr. BRISTOW. I have Mr. Rea's statement. I will just read his testimony before the Interstate Commerce Commission in the recent rate case and let the committee judge from the testimony I have. I may not remember that accurately, but I think I do, Mr. Thom. If I am mistaken, I will be very glad to correct it.

Mr. THOM. My authority is an accountant of the Pennsylvania Railroad, who was just in the room, and said in 10 years it was \$170,000,000.

Mr. BRISTOW. My authority is the testimony of Mr. Rea, the president of the road, in the Interstate Commerce Commission's recent rate case, on November 15, 1917. I will read that, since it has been called in question. This was the cross-examination of Mr. Rea in that case by Mr. Thorne and Mr. Patterson, the Pennsylvania attorney, and Commissioner McChord and some others. I will just read it into the record here and let it stand for whatever it is worth, Mr. Thom.

Mr. THORNE. Now, Mr. Rea, during the past 50 years your company has never failed to pay a dividend, has it?

Mr. REA. It has not.

Mr. THORNE. Now, Mr. Rea, I will ask you if your reply just made does not also apply to the fiscal year ending June 30, 1917? I will repeat the question: You had enough to pay all of your operating expenses, taxes, interest on funded

debt, pay all your dividends, and had \$30,000,000 left over, which was the greatest in your entire history, with only one exception. Is that correct or is it not correct?

Mr. REA. I think that is correct.

Mr. THORNE. Now, as to your property account, I notice, if I am not in error, that you have increased your property since 1907 by approximately \$500,000,000; is that correct?

Mr. REA. Yes, sir.

Mr. THORNE. And during that time you have increased your total capital obligations \$150,000,000, approximately?

Mr. REA. Yes, sir.

Mr. THORNE. That leaves an increase of \$350,000,000 that did not come from the sale of securities?

Mr. REA. Not necessarily.

Mr. THORNE. I also find that your surplus—unappropriated surplus—in 1917 was greater than in 1907. Now, I ask you, Did that \$350,000,000 come from new money put into the property by the owners of the property purchasing additional securities or by outsiders purchasing additional securities, or did that \$350,000,000 come from earnings?

Mr. REA. I could not say offhand. I would have to analyze the accounts.

Mr. THORNE. Where else could it have come from?

Mr. REA. It might have come from the sale of property and securities in the treasury.

Mr. THORNE. But your unappropriated surplus was greater than it was then, and those factors are reflected in your surplus, are they not?

Mr. REA. Well, I could not say offhand, but certainly a large amount came from earnings.

Mr. THORNE. Did not practically all of it, Mr. Rea. Where else could it have come from? Your surplus is greater now than it was then.

Mr. REA. Well, I assume that you are right.

Mr. NORMAN. Do you think that your company should be allowed to increase rates so as to earn as much or more as in normal times after paying your part of the cost of the war?

Mr. REA. Yes.

That is quite an interesting observation in connection with war taxes. He thinks that they ought to earn the same over and above war taxes.

Senator POINDEXTER. They ought to pay the war taxes and then collect them from the other people.

Mr. BRISTOW. I read the redirect examination by Mr. Patterson. Mr. Patterson is the attorney for the company:

Mr. PATTERSON. What has been the average expenditure for road and equipment of the Pennsylvania system for the last 17 years?

Mr. REA. \$53,000,000.

Mr. PATTERSON. Will you please state to the commission what expenditures must, in your judgment, be made if the Pennsylvania system is to adequately perform its function during the ensuing year?

Mr. REA. Well, very much more than \$53,000,000 per year.

Mr. PATTERSON. Of what nature are these expenditures which must be made?

Mr. REA. They are for improved terminals, running tracks, engines, cars, various improvements to lines, third tracking, fourth tracking, and all other improvements to keep the whole property in balance and to meet the expanding business which, as is well known, doubles about every 12 years.

Mr. PATTERSON. Does this proposed rate increase the question of securing additional net operating income to the railroads bear any relation to the question of securing additional facilities, whether of road or equipment?

Mr. REA. Unquestionably. It strengthens the credit of the road and enables it to continue the policy which has given it its position to-day in the financial world.

Mr. PATTERSON. Is it, or is it not, going to be absolutely necessary, when the time comes to make all these improvements out of earnings, to reimburse the Treasury by the sale of securities when they are available?

Mr. REA. That seems to be the only means at present, the Government practically, and necessarily, closing the financial market to all other financing.

Mr. PATTERSON. Now, after you get through providing for these operating expenses, have you got to have sufficient net operating income to provide a basis of credit?

Mr. REA. Yes, sir.

Mr. PATTERSON. For these improvements and for everything else?

Mr. REA. Yes, sir.

Mr. THORNE. The public has paid three-fourths of the five hundred millions out of earnings.

Mr. REA. On reasonable rates. They were entitled to every dollar of it.

Mr. THORNE. And, as I understand it, if this advance is granted, it would not enable you to market, or you would not try, at the present stage of the market, to issue a new bonded indebtedness?

Mr. REA. No; we do not need it. Just as soon as we do need more money we will be in the market—probably next spring.

Commissioner McCHORD. If the Government would furnish capital, cars, engines, or anything else necessary?

Mr. PATTERSON. You do not mean to say that that would do away with the necessity of increased rates?

Mr. REA. No; I do not.

Mr. Rea wants the increased rates, even if the Government does meet these pressing necessities.

Commissioner McCHORD. Do you want that in addition?

Mr. REA. Oh, absolutely.

Mr. PATTERSON. That is what I thought.

Commissioner CLARK. Mr. Rea, I want to ask you in regard to one of Mr. Patterson's questions and your answer: First, to be sure that I understood you correctly, and, if I did, I would like to have you explain a little bit further. He asked you a question, and you answered it in the affirmative, as I understood it, to the effect that you considered it necessary, as the only means of securing the money, that the rates should now be increased so that you might make improvements which are imperatively necessary and which ordinarily would be charged to capital, and reimburse the Treasury by issuance of securities later?

Mr. REA. Yes, Mr. Commissioner. It seems to me that is the only possible way we have of securing the money at the moment. You see from my statement there that we have under expenditure about \$103,000,000, at the rate it has been going, five to six or seven million dollars per month—these have to be made, or the work must stop—all of which is essential or necessary to the economic operation of the railroad and its enlarged output.

Now, that is the testimony from which I got my information, and Mr. Rea admitted, as I understand his testimony, that of the \$500,000,000, \$150,000,000 went from the sale of new capital and \$350,000,000 from earnings.

Senator CUMMINS. When you began to read, or just before you began to read, the examination of Mr. Rea I think there was some confusion in your language about the period of the comparison.

Mr. BRISTOW. It was a 10-year period. The time I referred to was 1907 to 1917, a 10-year period.

Senator CUMMINS. What you meant to say was that since 1907, \$500,000,000 have been put into the property by the Pennsylvania road, of which \$350,000,000 have been taken from earnings?

Mr. BRISTOW. From earnings.

Mr. THOM. The statement was a little broader than that. The statement was that \$350,000,000 came from earnings within that 10 years, and that was the point I was challenging. I did so on the authority of the accountant who is sitting by me, an accountant of the road, and that will not be found in conflict with what Mr. Rea said. I would not have said a word about it but for this error of Senator Bristow's, which is an error from my standpoint. He did not want it, if it was an error, to remain in the record.

Senator CUMMINS. I assumed the extract quoted from Mr. Rea's testimony; he admitted and conceded the fact that the surplus that had not been invested at all at this time was greater than the surplus when they began the comparison, namely, in 1907.

Mr. THOM. I do not know the facts about that.

Mr. BRISTOW. As I understand the testimony, Mr. Thom, in 1907 there was a surplus. In 1917 the surplus was greater than in 1907. During that time \$500,000,000 had been added to the property, \$350,000,000 taken from the earnings and \$150,000,000 from the sale of outside capital. The only way that I can understand how to arrive at that would be to take the surplus in 1907, the surplus in 1917, and if the surplus in 1917 was more than the surplus in 1907, then the \$500,000,000, \$350,000,000 of which was taken from earnings, did not reduce the surplus, so that the \$350,000,000 invested during that period came from earnings.

Mr. THOM. I wish to say that I think I am correct, so as not to take up any more time of the committee.

Mr. BRISTOW. I have given my authority, so that if there is any error in interpretation of what Mr. Rea said you gentlemen can interpret it just as well as I can.

Senator CUMMINS. Did you put the table of railroads that you used into the record?

Mr. BRISTOW. I will, Senator Cummins. I have not got a copy of it. I would like to make a copy of it, and I promised Commissioner Anderson a copy of it, and I would like to make a copy of it and then furnish it for the record.

Senator CUMMINS. I would like to get it in the record.

Mr. BRISTOW. It seems to me that the system which makes guaranties, that pays to the successful road such a large return on its capital stock, far beyond what they have ever paid in dividends to their stockholders, and at the same time guarantees to keep the property in first-class condition by an adequate depreciation fund and maintenance is wrong.

The Government is guaranteeing this. We do not know what is going to be the commercial and industrial conditions within the United States in the next few years. It makes no difference what depression may come to the ordinary business man or the investor, the Government of the United States stands behind with its pledge that the investors in these successful railroads shall receive this return regardless of what happens. All of us are making every effort we can to sustain the credit of the Government in the crisis.

Throughout the United States thousands and tens of thousand and hundreds of thousands of poor people that work hard for their money have invested in Government bonds bearing 4 per cent interest. If they needed that money for any necessity at this time they could not get par for it, because in the market those bonds are not now selling at par. We have got to go out and ask the people to buy large quantities of additional bonds, bearing 4 per cent, or some slightly increased percentage, probably, to sustain the credit of the United States Government in a crisis the seriousness of which none of us can foretell or predict. And it is now proposed to guarantee to the men who own this 112,000 miles of railroad rates of interest from 5.95 to 25 per cent, and probably have to call upon

the people of this country to furnish the money to make good that guaranty regardless of the effect upon their own business. This is not good public policy; it ought not to be done.

Gentlemen, Senator Underwood asked and Senator Pomerene, if we take these railroads if we do not have to pay what they are worth. Of course we do. But in my judgment whether you believe in the Government ownership of railroads or not, whether you believe in public ownership of railroads or not, the Government had better buy them than to get behind this guaranty, because then you know what you are getting for the money; now you do not know what obligations you are incurring, what industrial depression may reduce the earnings to, until the obligations may mount up to hundreds of millions to be taken out of the Public Treasury to make it good.

Senator POMERENE. Senator, it does seem we had to take over the operation of these roads. Everybody that I have heard speak on the subject seems to take this position. We have placed an estimate of \$13,000,000,000 as the valuation of these roads. That may vary a billion or two either way; that is your best estimate, and I suspect you are about right in that. Do you think whether we agreed on the principle of Government ownership or not the Government should assume such a great obligation as that at this time and issue bonds, and that that is the only way it could do it?

Mr. BRISTOW. Senator, I think there is another way, and I will tell you what I think. You may not think it is sound, but it seems to me that it is. I am not saying that the Government ought not to have taken them. I am not discussing that question. That probably would lead to differences of opinion.

As I understand, there are quite wide differences of opinion as to whether that was the best way to handle the situation, to take them over or not. I think if I gathered the gist of Senator Kellogg's questions to the witnesses that have appeared here, he thinks it was not necessary to take them over, that the matter could have been handled by a pooling, by suspending the antitrust laws as to the railroads. Others think that this was the best way to do it, and evidently the President does, and the Secretary of the Treasury does. I am not saying that it was not necessary to do it; I won't discuss now that feature, because it is done, and it will not do any good to discuss it. That has passed. We are supposed to have most of them anyway, at least we thought we had all of them.

I will say to you, Senator Pomerene, that I do not pretend to be a good authority on these things, but I have always been afraid for the Government to own these railroads for various reasons. I have always felt it was dangerous to go into the public treasury and take money and buy the railroads and assume the responsibility of operating them from a Government standpoint, because it is such a tremendous task. There is anywhere from twelve to fifteen billions of dollars involved. There are a million employees, there is a complicated system of rates, and so forth.

But I am convinced and have been for some time that you have got to unify the railroads of the United States into one system. The question that I think Senator Smith asked me was if it was not a fact that the same rates would give one company 25 per cent and

when applied to another company would be insufficient, so that such company would fail because it could not pay operating expenses? That is true. Take it in Kansas, uniform rates to all the roads. The Missouri Pacific fails, does not earn operating expenses in some years, or barely does, and can not pay its obligations. The Union Pacific, that is competing with it in the same territory, is making large sums, it is very prosperous, and so is the Santa Fe.

You give a rate that will make the Missouri Pacific pay and it is excessive on the other two, they earn more than they are entitled to earn; it is more than a reasonable return. You fix rates that are reasonable with the Santa Fe and the Union Pacific and the Missouri Pacific fails. There is not any way to cure it except to unify them; break up the unsuccessful road and attach it to the successful road so as to use the track that is there, that is serving the public, in the most advantageous way. As I said a while ago, I thought this was the first step in the unification of the railroads, and it would be a step in that direction if all of them were taken. Since you have got to unify them, they can only be unified by having one ownership. That one ownership, in my opinion, can be brought about in three ways: First, to permit a syndicate or a private corporation to be organized to acquire all the railroads in the United States and operate them as private property, as they are now, under one ownership. Of course I do not think that that would be sound policy. I do not think the American people ever would consent for one corporation or syndicate to own all the transportation lines of the United States and run them and operate them for profit.

I do not think there is any use for Congress to consider such a proposition, because it would be repugnant to public opinion in the United States, I think, and I think it would be dangerous. There are two other ways, one for the Government to buy them and pay for them and own them as Government property. That I do not think is practical at this time and I am not convinced that it is wise. The other way would be for the Government to organize a national corporation and authorize it to issue capital stock and to acquire the railroads and exchange the stock in this national corporation for stock in the railroads that are now in existence, exchanging the stock of the national corporation at par for stock in existing companies at the average market value for the stock for the last five years. That would get down to approximately what they are worth. That is what the public thinks they are worth. That is what the owners of this stock have paid for it. That is what they could get for it if they sold it. Permit them to exchange stock in these separate corporations for stock in the national corporation, and the national corporation would own all of the railway property in the United States and obtain it in this way.

Senator KELLOGG. Who would own the national corporation?

Mr. BRISTOW. Stockholders would own it, the same as they own stock in a railroad now.

Senator KELLOGG. The public generally?

Mr. BRISTOW. The public generally; the public would own it.

Senator CUMMINS. Would you give them a voting power in the election of directors and the like?

Mr. BRISTOW. No. If you did, some man would get control of it and speculate in it. The stock would be guaranteed. The Government would guarantee that that stock would pay a dividend of from 4 to 7 per cent, whatever it might be; I would say from 4 to 6. The railroad property is private property, let it pay its share of the taxes the same as any other property and make the stock exempt. It probably ought to be exempted from taxation except as to extraordinary taxes.

The public generally would own this stock. The President of the United States would be authorized to appoint a board of nine directors—I am just using these terms. That would provide for the operation of these roads as one. The Interstate Commerce Commission would fix the rates that should be charged, the board of directors would provide for the operation and fix the salaries and the compensation of the employees, etc., according to whatever rules Congress might formulate, and the Interstate Commerce Commission would be directed by Congress to levy rates that would pay a return of not less than 4 per cent upon this capital stock, nor not more than 6. If it is necessary to make it sell at par, not more than 7. If anyone refuses to take stock in the national corporation in exchange for the stock that he now has, then I would provide for the condemnation of the stock in the private corporations and the sale of the stock in the national corporation to pay these holders of the stock in the private corporations whatever the condemnation proceedings found it to be worth.

In that way the stockholders would own the railroads of the United States, they would have a fixed investment, with a guaranty, and the Interstate Commerce Commission would be instructed to levy rates to maintain the property and pay this return to the owners, and the public would be freed from the scandalous proceedings that have so often attended railway financing.

The CHAIRMAN. That would eliminate the State commissions.

Mr. BRISTOW. Well, it might and it might not. That would depend upon the law. I do not think it should.

The CHAIRMAN. Then would you not necessarily have to limit the amount that the State might tax the property?

Mr. BRISTOW. I do not think so. I am not afraid of the State confiscating Government property. They never have done it; they never have shown any disposition to do it.

The CHAIRMAN. They might not want to confiscate it, they might appropriate it.

Mr. BRISTOW. I am not afraid of that, Senator. That is a bugaboo that is held up here, but there is nothing to it. There is no reason for it. There is no experience which will justify that. If it were found that it was a danger, why then eliminate it, of course. The Government has got to protect itself from injustice.

Senator POMERENE. Do you think that stock could be sold now?

Mr. BRISTOW. I would rather have it than Government bonds, and I will tell you why. What property is behind it? The railroad property of the United States. What is its revenues? A fair charge for handling the commerce for these people, and the railroads are as essential to the industrial life of the American people as food is to the life of the human being.

Senator POINDEXTER. You can not get food without them; that is, as to a large part of the population.

The CHAIRMAN. You can not get food with them now.

Mr. BRISTOW. The railroads are absolutely essential; the Nation could not live without them. A mortgage upon the revenues of the American railroads and on the property of the American railroads at a fair value is as good a mortgage as can be levied on any property in this world. Its returns are as certain as the returns on taxes and more secure than the obligations of any political government.

Senator POINDEXTER. What advantage would that plan have, Senator Bristow, over direct Government ownership?

Mr. BRISTOW. Senator Poindexter, I think it has a good many. In the first place, the method of acquiring would be very much more easy, I think, at this time than the raising of the money to buy them.

Senator POINDEXTER. You think the sale of those bonds would be easier?

Mr. BRISTOW. The change of the stock in the one for the stock in the private roads that would be the various parts of the one.

Senator POINDEXTER. You think as a method of financing it is preferable?

Mr. BRISTOW. I think it would be very much preferable. That is my judgment. Then, I think that in its operation it would be very much more preferable. If we buy the railroads as a Government piece of property and operate them, then we have got to go into the Public Treasury and appropriate money to pay for the operating expenses. The responsibility for making the system pay its own way is not there, because if it does not the Public Treasury is available; and it is so easy to reduce rates and thereby reduce your revenue then the demands of constituents to increase the wages of employees or expenditures for various purposes when the Public Treasury is available to go to to get the money to do it with is very tempting. The importunities of the shipper for reduced rates are strong; the importunities of the employees for increased wages are strong; and when there is a great public crib here out of which you will get the money to make up the deficit, if there is one, I think it is a very dangerous thing in a Government like ours, where politics plays such an important part of its operation.

Senator POMERENE. Do you think you could keep politics out of an organization of that kind?

Mr. BRISTOW. The Interstate Commerce Commission is quite free from it. If these directors are appointed, and removable only for cause, I think it will be practically free from politics, and they operate the roads. The investor, if the expenses get high, gets less dividends; you may run his dividends down to 4 per cent and he will object, and there will be millions of objectors. He will want to know why the dividends are not 6 instead of 4. The shipper, if the rates are increased, will want to know why they are increased. If to make up the dividends that are necessary, he will inquire as to the efficiency of the operation or as to the extravagance of it. If the employee wants additional wages and gets them, and it is more than the general public thinks he is entitled to, you have got the investor and the shipper to balance the demands of the employee. If the employee is not getting enough, he appeals to this board for more; and, in my judgment, you will balance the interests involved

and you will get nearer justice than by any other system that can be devised.

Senator KELLOGG. Will the management of all the roads in the United States, as to whether they should extend them to accommodate new communities, whether they should better them, all be in a board of directors, in Washington?

Mr. BRISTOW. The supreme authority. I would subdivide that, of course, into subdivisions, for operating purposes.

Senator KELLOGG. And they will of necessity be political appointees?

Mr. BRISTOW. No.

Senator KELLOGG. How can they be otherwise?

Mr. BRISTOW. The United States Government owns the Panama Railroad Co.

Senator KELLOGG. Yes.

Mr. BRISTOW. There is not a single employee of the Panama Railroad who is a political appointee.

Senator KELLOGG. Do you think a board of directors can be held here in Washington and kept free from political influence?

Mr. BRISTOW. If they are appointed for a period of nine years and removable alone for cause, I think they can.

Senator KELLOGG. And are the nearly 2,000,000 employees of the country working for the Government railroad, practically a Government railroad?

Mr. BRISTOW. No; it is not a Government railroad; it is a privately owned road.

Senator KELLOGG. And they will, more or less, use their influence, will they not?

Mr. BRISTOW. I do not think it will be as effective as it is now.

Senator KELLOGG. Is this board of directors to issue any amount of stock it sees fit for extensions of road?

Mr. BRISTOW. No.

Senator KELLOGG. Who will decide that?

Mr. BRISTOW. I will have the law decide that. I will say if there is an extension of the road desired to a community where there was none, that if the direct beneficiaries of that extension will put up a certain amount of money, for which they are to receive stock in the national corporation, that out of the surplus fund that is created for improvements of that kind the remainder of it will be issued and stock sold to make up for that extension. I would require the communities through which it is run to subscribe in order to project extensions into new territory.

Senator KELLOGG. Then, if the community was willing to subscribe, you would make it obligatory upon the board of directors to issue stock for the balance?

Mr. BRISTOW. Oh, for the balance; yes. If the board of directors, after consideration, think it is justified.

Senator KELLOGG. Yes.

Mr. BRISTOW. I would. There are various details like that that you could not work out without experience; but I will tell you, Senator Kellogg, the extension of a branch line into a community that has not railroad facilities, if those that would be benefited—they vote bonds now; I do not know of any section of our country where

there are not certain subscriptions made in order to get a branch line extended, and they are always beaten out of the stock. It never amounts to anything; you know that just as well as I do. There is never any value attached to it.

Senator KELLOGG. No; I do not believe in the system at all. I do not believe in local communities having to subscribe in order to get reasonable railroad facilities, either under this plan or any other.

Mr. BRISTOW. Well, I think that they ought to do it, because you put some responsibility on them, and it would be a restriction against wildcatting, in my judgment.

Senator KELLOGG. Many a local community would be willing to subscribe for Government bonds which the Government guaranteed for the sake of getting a railroad, because if the Government guaranteed it the Government would have to pay it whether it earned it or not, and almost any local community would subscribe to the stock to complete an extension if the Government was behind it.

Mr. BRISTOW. If it was needed and if the responsible officers of this national corporation—the responsible officers of the corporation—thought it was justified, they ought to do it.

Senator KELLOGG. I would not spend any more time on that; but I want to ask you a few questions about these rates. You finished that subject, did you not?

Mr. BRISTOW. Yes. That was my notion.

Senator KELLOGG. If the chairman does not want to ask any more questions, I wish to.

The CHAIRMAN. You may ask them, Senator Kellogg.

Senator KELLOGG. Senator, of course you realize that we can not take up each one of these railroads and arrive at a conclusion as to the value of the use of its property in Congress, can we?

Mr. BRISTOW. No.

Senator KELLOGG. It can not be done.

Mr. BRISTOW. Not very well.

Senator KELLOGG. It could not be done in here if we started and took testimony as to every one of them?

Mr. BRISTOW. No; I do not think Congress is the tribunal which would ultimately decide the value of the use of the railroads, anyway.

Senator KELLOGG. Then we have to adopt some plan whereby we authorize somebody on behalf of the Government to pay for the use of the property, have we not?

Mr. BRISTOW. Yes.

Senator KELLOGG. And it has got to be a plan that is not made with reference to one or two or a dozen roads, but all of them?

Mr. BRISTOW. Yes.

Senator KELLOGG. What plan do you recommend?

Mr. BRISTOW. I think the best would be to guarantee, if you are going to guarantee under this system.

Senator KELLOGG. You have got either to guarantee or to pay money for the use of this property.

Mr. BRISTOW. I would suggest that you guarantee the dividends that they have paid for a period of years.

Senator KELLOGG. Let us look at that.

Mr. BRISTOW. I do not say I believe that is a good policy, but I think it is a much better one than the one suggested.

Senator KELLOGG. Is that the best you can think of of all the plans?

Mr. BRISTOW. No; I think that is too much. I do not think you ought to guarantee more than 4 per cent upon the value of the property—as a guaranty.

Senator KELLOGG. I was just talking about the use of the property during the war. We are not taking over the property and paying for it permanently.

Mr. BRISTOW. A guaranty of 4 per cent on the value of the property and ascertain the value of the property as best you can. There are two or three methods that have been suggested, and then if the property earns more than 4 per cent, say, up to 6, allow them to have 6 per cent, and all over that put into a fund to make up the deficits of the unfortunate roads that are not making anything.

Senator KELLOGG. You would guarantee not less than 4 per cent nor more than 6. And who would determine that, whether it was 4 or 6?

Mr. BRISTOW. The earnings of the road.

Senator KELLOGG. Yes; but when the earnings of a lot of these roads are more than 4 per cent?

Mr. BRISTOW. Yes.

Senator KELLOGG. And we know there are some earning more than 6.

Mr. BRISTOW. Then, let them have 6 as a maximum and take the remainder to pay the deficit on the roads that are not earning 4 per cent.

Senator KELLOGG. Take the Pennsylvania Railroad, that has earned 6 per cent and has paid it for a good many years. Do you think to take property from it forcibly and pay 4 per cent and nothing for betterments and improvements would be just compensation?

Mr. BRISTOW. I am not saying that I think it is a workable plan. I do not think this plan will work at all and do justice to all. I do not think it can be made to do justice to all. But I do think if you are going to tax the American people to give a guaranty during the stress of the times that we are approaching you can not afford to guarantee the highest return in the history of railroads in the United States since railroads were first established.

Senator KELLOGG. I am not asking about that, but I am trying to get at some concrete plan, because we have got to adopt one. Do you think that we can afford to take well-managed roads like the Chicago & North Western, like the Northern Pacific, the Great Northern—I won't say the Burlington, because you say that is earning too much, but we will take these others—and the Pennsylvania, which companies have paid 6 and 7 per cent regularly for many years and have been well managed—pay them 4 and nothing at all for those properties?

Mr. BRISTOW. Under the plan I suggested they get 6.

Senator KELLOGG. Do you think you can afford to take those roads that have earned 7 for a good many years and have them well managed and say that you will pay them 6?

Mr. BRISTOW. Why, yes. Secretary McAdoo said yesterday that you could draft the young men of this country and put them into the Army and destroy what they had, and that the little roads that

were going to lose their returns and the value of the property would have to take it. I do not see why the Pennsylvania should not take it as well as the small road.

Senator KELLOGG. You think, then, that we ought simply to fix it at 6 per cent on the stock of those companies that have paid that and no more?

Mr. BRISTOW. I think you would do a good deal better than is proposed. No; I would not pay any more under this guaranty. I think it is a great deal more equitable to do that than to give the Pennsylvania a guaranty here of 10 or 12 per cent and some small road nothing.

Senator KELLOGG. I am not talking about that.

Mr. BRISTOW. But you say you have got to do something.

Senator KELLOGG. I am not saying we are going to do this; I did not make the suggestion. The Government and the Secretary of the Treasury have made the suggestion.

Mr. BRISTOW. I know, Senator, but we are considering this bill which provides that that should be done, and you are asking me to suggest something which, in my opinion, would be better. I think it would be better to do that. I do not think that because a road is prosperous and is earning over 6 per cent, when we reach a crisis such as we have reached now, when these radical or revolutionary governmental policies are necessary, you can protect that road and its earnings that are as large as they are and say that it shall not take any less and then make the public pay that amount whether the country is prosperous or not.

Senator KELLOGG. I do not understand that the railroads have asked to be taken over and have asked to be guaranteed.

Mr. BRISTOW. I am not saying that.

Senator KELLOGG. I think the railroads were taken over without any consultation as far as they are concerned.

Mr. BRISTOW. But the President and his advisors thought it was necessary in order to relieve a broken-down condition. The railroads have failed to meet the emergencies; that can not be denied. It is alleged by some of them that they failed because the Government had imposed undue burdens on them by some of its administrative processes. Others say that they are broken down and they are unable to handle the commerce of the country because of inefficiency. I am not talking about that. I do not know why it is, but there is a breaking down, Senator, and since there is a breaking down something has to be done, so we are advised, and this is submitted to us as the plan. I thought it would be a great deal better to take and limit the earnings of the great and prosperous roads and take care of those that are not earning rather than to guarantee the full earnings of the prosperous roads and then go into the Public Treasury to make up the deficits of the nonprosperous roads.

Senator KELLOGG. That is, you would take the surplus of the prosperous roads and pay it to the nonprosperous roads?

Mr. BRISTOW. I think when you nationalize the system you have to.

Senator KELLOGG. Have we a right to do that?

Mr. BRISTOW. I am told that legally we have not unless they agree to it.

Senator UNDERWOOD. Let me interrupt a moment, Senator Kellogg. If we find that we have got to base our compensation to these roads, which is probably on what the Court of Claims would hold as a reasonable rental value or reasonable value for the property, one or the other, and we reach the condition such as you have just described, is it not the part of wisdom in that condition for us to limit the operation of this bill to the period of the war and not carry it any further?

Mr. BRISTOW. Senator, I listened with a great interest this morning to that discussion. I do not think that is a very material point. I think that when this is in operation, if the plan that has been outlined to you is followed, that it will break down so that there is no danger of Congress or anybody else trying to continue it during the period of the war or after the war. I do not think it is practicable.

Senator UNDERWOOD. If there is that danger of its breaking down, had we better not throw an anchor to windward and see that it is limited to the period of the war?

Mr. BRISTOW. I would not make it indefinite. I do not think I would do that.

Senator UNDERWOOD. You would put a reasonable limitation on it?

Mr. BRISTOW. I think so. But I do not think that is necessary, Senator, because this will not work. You can not take a part of these railroads without taking all of them. If you are going to unify the railway systems of the United States, you have got to take them all; you can not take the Missouri Pacific and not the Union Pacific or the one and not the other.

The CHAIRMAN. Senator Bristow, you said a moment ago, or instanced two reasons why the railroads, in your opinion, had broken down or what have been alleged as the reasons. What effect on that breaking down or what influence did our antipooling law, our laws compelling competition, have to do with the breaking down under the war condition, in your opinion?

Mr. BRISTOW. I do not think it had any. I do not believe that the antipooling or the elimination of the antipooling law has been very material. It may be, and I am inclined to think, although I do not want to get into a disputed question, that the priority orders, and the commandeering of shipping on the Atlantic coast has greatly exaggerated the condition. I think that when those policies were determined upon it was not foreseen as to what the results would be on the transportation in the East or what effect there would be on the transportation in the East as the result of these orders. That is not a matter for discussion here. That has passed. I do not think that the antipooling law has brought the congestion. The repeal of it might have enabled them under the stress of circumstances to somewhat relieve the congestion, but, Senator Smith, this congestion was inevitable sooner or later.

I do not want to go into it now, but the rate-making system in the United States has forced a congestion at freight terminals which ultimately had to break down some time.

Senator Poindexter, since you asked me to look up some matters, I am sorry to take as much time of the committee as I am taking. I know you are getting tired of hearing me.

Senator POINDEXTER. Either now or later I would like to hear you on that subject.

Mr. BRISTOW. I will take that up right now, Senator. If you will tell me what is in your mind, Senator Pomerene, perhaps this will answer it or may not. You were going to ask something.

Senator POMERENE. What I had in mind was this: That I felt that you and I must agree, whatever our views as to the character of this legislation may be, that it is wise from a financial standpoint to have all uncertainties as to the amount of compensation which is to be paid to various railroads for these properties settled. That will serve to stabilize the market, and here you have these securities held by financial institutions, and they do not know, for instance, whether the Pennsylvania is worth \$90 on the hundred or \$110 or \$120 on the hundred. I think you must agree that we ought to stabilize this or adopt a plan which would be definite and certain, and do it speedily, whatever it is. You gave a long list of properties of the best railway systems in the country here, which were earning from 8 and 9 per cent up to 25 per cent. You have said that 6 per cent was a sufficient sum for these stocks to earn. That may be so as an abstract proposition, but it is very clear that you could not get a company that was earning 10 per cent on its stock to accept 6 per cent as full and complete compensation. The railroad officers would not do that, and if they wanted to do it, the stockholders and other security holders would probably object.

If we were to limit this guarantee or compensation—I prefer the word compensation—to 6 per cent, why, there would not be one of these systems here that would accept that proposition, and as a result it would go to the Court of Claims to determine what compensation should be paid, and one of the objects of this legislation which was to stabilize security values would, in my judgment, be defeated. If it were possible for us to compel the railroads to take 6 per cent as a matter of law, then we might pursue one course; but we can not compel them to take less than what is going to be a fair and just compensation for their property while we have the use of it, and does it not appeal to you that under those circumstances, with that legal obstacle in the way, we ought to do something which would induce the railroads to make a fair and at least a quick adjustment?

Mr. BRISTOW. No, Senator; I can not agree with you there. I do not believe that it is right or fair or just or wise to permit a railroad that is making an extravagant return on its property to hold the Government up in the face of this crisis.

Senator POMERENE. Let us admit that is so, Senator; how are you going to help yourself from a legal standpoint? That is the question which puzzles me.

Mr. BRISTOW. Yes; it is a little difficult.

Senator POMERENE. Slightly.

Mr. BRISTOW. It is a little difficult.

Senator ROBINSON. May I ask you a question in that connection, Senator?

Mr. BRISTOW. Yes, Senator.

Senator ROBINSON. I want to know what you think is the true or legal measure of just compensation to a carrier taken over by the Government?

Mr. BRISTOW. Well, I think from 4 to 6 per cent on the value of its property would be fair.

Senator ROBINSON. No matter what its earning capacity is?

Mr. BRISTOW. Probably you might go above 6 per cent; but this excludes taxes, except the special war taxes, and an obligation that is exempt from taxation sells pretty well if it draws from 4 to 6 per cent.

Senator ROBINSON. Do you think that a court would hold that if a railroad brought a suit in the Court of Claims and disclosed that its earning capacity was 10 per cent, that its just compensation was 5 per cent?

Mr. BRISTOW. It might not.

Senator ROBINSON. How could it hold it; that is what I want to know?

Mr. BRISTOW. I am not unmindful of the very difficulty that you suggest, and that is the reason I say this system which I propose is very much better, or that Government ownership itself—acquiring the property—is better.

Senator ROBINSON. You say if the stock and bonds were excluded from taxation.

Mr. BRISTOW. I did not say they were exempt from taxation. But I say the tax on the property is always deducted in all these calculations. Now, the States may impose a tax on the ownership of the railroad security. Some of them do and some of them do not, I understand. But the taxes on the property that are levied are always deducted as an operating expense before the net is referred to, and in all of these calculations I made the taxes have been deducted as an operating expense the same as any other expense of operation.

Senator ROBINSON. The other point that I had in mind, and which was really the point I wanted to inquire about and get your view upon, is this: If you as a court were charged with the obligation of determining this question of fair compensation, would you think that 5 per cent or 4 per cent or 6 per cent, or any other per cent which might be stated, would constitute due compensation, without regard to the earnings?

Mr. BRISTOW. Senator, I will tell you what I would do if I were a court, and that is a good deal of a presumption for me to assume—that I am a court in passing on that question—but if I were, I would first demand evidence as to the value of that property, and then I would fix a fair return under all the circumstances and conditions; it would be somewhere from 4 to 6 per cent on the value of that property. If the owner of it devotes it to the public use—if it earns 25 per cent, he is earning too much; he is not entitled to have it, and he ought not to have it. He is entitled to a fair return on the value of the property which the public uses, and I would like to know what the value of that property was. I would demand evidence as to what the value of it is; then, when I satisfied myself on that, I would make him a fair allowance on that value.

Senator POINDEXTER. Senator Bristow, in that connection, from a legal standpoint I would like to ask you a question, and I ask you from the legal standpoint because you have studied this question especially and know something about the laws relating to it. There is a very wide difference in arriving at the just compensation in the case of a railroad and a public-service corporation which derives its revenue from rates that are under the control at all times of the Government. It is true, is it not, that the Government can reduce

these rates before they are taken over by the Government, while they were operated by private corporations, so that they could not pay more than 4 per cent or even less than that?

Mr. BRISTOW. Well, it could reduce it to what would be a fair return on the value of the property used.

Senator POINDEXTER. That element of public policy, there is a very wide discretion, is there not, vested in the Government?

Mr. BRISTOW. Yes, sir.

Senator POINDEXTER. And that fact would be taken into consideration in arriving at the just compensation if the Government takes them over?

Mr. BRISTOW. I think so; and because the Burlington Railroad has been earning 25 per cent on its capital stock I do not think is any reason why it is entitled to it. That is more than it ought to have—of course it is. I think the rates ought to have been reduced. That percentage might not be as high if it had not been for ruining a lot of roads who were not so fortunate as to earn so much. But when you are dealing with the rental value of the property, Senator Robinson, you can demand evidence of the value of it.

Senator ROBINSON. Certainly.

Mr. BRISTOW. Then give them a fair return on that property that we are using. I do not believe they have any kick.

Senator ROBINSON. I believe you stated the other day that Congress has no power to determine what is just compensation. Do you agree to that?

Mr. BRISTOW. Of course, Congress has the power to determine the rate which determines the earning, but the court could set aside any statute which the Congress might enact if the compensation is not fair.

Senator CUMMINS. What rates the corporation would use.

Mr. BRISTOW. What rates the corporation would use, which would produce the returns.

Senator ROBINSON. I understand that, within certain limitations; they can not prescribe a nonremunerative rate.

Mr. BRISTOW. No.

Senator ROBINSON. There are some other limitations. I am not talking now about the rate-making power. I am talking about the taking of property for public use. Can Congress provide for the taking of public property for public use, railroad property or any other property, and prescribe what shall be paid for it?

Mr. BRISTOW. No; of course it can not do that except as suggested, because the courts veto that; but it could pass a law prescribing the rates, and they could go to court and test that law as to whether it was valid or not. I do not know, Senator, but I think if they provided a rate of 6 per cent for the use of that property I do not think the courts would set it aside very soon.

Senator ROBINSON. What I can not understand is how you make it 6 per cent, instead of 4 or 3 or 2 or 1.

Mr. BRISTOW. Well, I think that 1 per cent is not enough. I do not think Congress would hold that 1 per cent was good compensation—2 or 3. Four might be and 5 would be, and I think 6 would. I have used the term 6 per cent because I do not think there would be any question about that.

Senator ROBINSON. You think, then, that without regard to the value of the use of the property in the hands of the owners, a court could determine a rate of return on the property for its use which would be due compensation?

Mr. BRISTOW. Well, of course, I am not a lawyer, Senator.

Senator ROBINSON. I thought you were.

Mr. BRISTOW. No, sir; I am not a lawyer.

Senator CUMMINS. Let me get my mind clear. Is there any well-considered case which holds that the earnings of a public utility corporation are the measure of the value of its property?

Senator ROBINSON. Not that I know of.

Senator CUMMINS. I do not know of any such case.

Senator ROBINSON. And I am asking him what he regards as the true value, to get his opinion on it.

Mr. BRISTOW. I think it is somewhere between 4 and 6 per cent; and at these times I would not guarantee 6 per cent, because I think it is more than money is going to be earned in this stress. But that would be so much better than the indefinite proposition we have now. If you take and use the property of the Union Pacific or if the Government takes the Missouri Pacific and uses it, why, it has got to pay a fair return for the use of that property; if it takes the Burlington and uses it, it ought not to be required to pay more than a fair return.

Senator ROBINSON. The difficulties would be very much increased if the Government took the properties of the Union Pacific and refused to pay anything and remitted the company to the court for its remedy.

Mr. BRISTOW. I think so; yes.

Senator ROBINSON. It would be desirable, if possible, to fix some basis that would be acceptable, and escape the delays, complications, and embarrassments of litigation?

Mr. BRISTOW. I think so; very much.

Senator ROBINSON. Do you think a railroad which is easily earning 10 per cent upon its property would be legally obliged to accept a 5 or 6 per cent guarantee?

Mr. BRISTOW. Well, Senator, whether it accepts it or not, if you take the property and offer it a fair return on the value of that property which the Government is using, it has got to accept it.

Senator ROBINSON. Is it not proper to take into consideration, since the Government is taking the railroads, what the Government has been permitting the railroads to earn under private management? This has been done, you understand, under orders and regulatory processes of Government agents by the Interstate Commerce Commission. Why is not that fair to consider?

Mr. BRISTOW. If you take a period of years prior to the war when these extraordinary earnings came in—if you will take five years prior to 1915 and including 1915—the fiscal year of 1915, which goes back beyond this period of extraordinary earnings—I think that would be very much better than this.

Senator ROBINSON. Let me understand you. You think that in order to find a true average or a fair return it would be appropriate to take all lean years, or some lean years and some profitable years?

Mr. BRISTOW. Oh, no. I say the net earnings, the net revenues.

Senator ROBINSON. Why do you say, then, go back beyond 1915 and take it up to and including 1915?

Mr. BRISTOW. Because the earnings for 1916 and 1917 are so extraordinary and unusually great that they are abnormal; they are the result of the war, and I do not believe the Government of the United States ought to guarantee to these railroads a return based upon an extraordinary condition which the war produces.

Senator ROBINSON. I think I understand your position. Then you would exclude both 1916 and 1917 and take 1915, 1914, and 1913?

Mr. BRISTOW. I would take five years. I think that would be fair.

Senator ROBINSON. Is there any reason for any particular number of years as a period to average over?

Mr. BRISTOW. Only five years gives a better average than three years.

Senator ROBINSON. Suppose you took the five years immediately preceding and including 1915, would you say, from your experience and investigations as a member of a State railroad commission and other bodies, that those were normal years in railroad operation?

Mr. BRISTOW. I think they were; yes, sir.

Senator ROBINSON. Of course, you know it has been contended before this committee that they were not.

Mr. BRISTOW. Senator, the way to determine that is to see what the earnings have been. I have the earnings here for 10 years.

Senator ROBINSON. I think that has all gone in. I have not heard your figures, but I think the earnings or figures came from the same source.

Mr. BRISTOW. Yes. If earnings up to 1916 were normal, why, the five years will get the normal earnings. Go back to the beginning and come up.

Senator CUMMINS. There never was a normal year until 1916.

Mr. BRISTOW. Well, that is the biggest year except 1917.

Senator ROBINSON. Of course, taking a five-year average or any average in order to get anything like an accurate average rate of return, you would have to know the value of the property used during each year for property purposes.

Mr. BRISTOW. Yes.

Senator ROBINSON. That would be quite difficult. It would be very difficult, would it not, Senator, to obtain the true value of a railroad property used for carrier purposes in any year? It would be a long and difficult process.

Mr. BRISTOW. The Interstate Commerce Commission value would be the only accurate value we have.

Senator ROBINSON. And that has not proceeded far enough to be of any value to this committee?

Mr. BRISTOW. No; not to be of any value.

Senator ROBINSON. How long have they been engaged in that work? I do not recall, but I know it is a number of years.

Mr. BRISTOW. They started four years ago.

Senator ROBINSON. And the work done over a period of four years is not of sufficient value to be of any use on this question?

Mr. BRISTOW. It is as to some carriers, Senator, but not as to all. That is, they are not all completed yet.

Senator ROBINSON. I understood the statement quoted by Mr. Prouty was while he had charge of that work; the information which he had gathered would have no value, in his opinion.

Mr. BRISTOW. I suppose that is because it had not been compiled.

Senator ROBINSON. How long do you think it would take the road to get any compensation, to get these questions adjusted, if we undertook to ascertain the value of property used by the respective carriers during the five-year period than you have in mind, as the basis of determining, what would be a fair return? How long do you think those questions would be under consideration and litigation?

Mr. BRISTOW. Take the average value of the securities. That would be a pretty good index.

Senator ROBINSON. We were discussing now in this connection your other proposition, your last proposition.

Mr. BRISTOW. That would be the best, but that is not practical now.

Senator ROBINSON. As a matter of fact, it would be impracticable to undertake to determine the value of the property in the standard that you and I have in mind for the purpose of fixing the return in this bill.

Mr. BRISTOW. It would be impracticable to get the value of the property as it is being taken by the Interstate Commerce Commission, but the average value of the stocks is nearer to the value of the property than any other data that is available.

Senator ROBINSON. You think that the average value of the stocks would reflect the value of the property?

Mr. BRISTOW. The stocks and bonds will come nearer reflecting the value than any other data that is available—and that is available.

Senator ROBINSON. Do you think that you can take the average value of the stocks and bonds and by that process arrive at the true value of the property, or approximately so?

Mr. BRISTOW. That will give an approximate value of the property. in my opinion.

Senator ROBINSON. That is what I wanted to understand—your idea.

Mr. BRISTOW. That is my judgment, Senator.

Senator ROBINSON. It seems to me it would be a practical impossibility.

Mr. BRISTOW. Well, that is what the owners paid for it; that is what they have a right to ask a return on.

Senator ROBINSON. But the very process of determining what the owners paid for it—no; the market value of the stock is not what they paid for it.

Mr. BRISTOW. No; but it is what they can get for it. It has been the estimate which the general investing public has placed upon the property.

Senator ROBINSON. You think that is a fair criterion for determining the value?

Mr. BRISTOW. I think it is the best we have at present.

The CHAIRMAN. Senator Bristow, do you, or do you not, think that the extreme high cost in all articles incident to the war ought to have some weight in determining the compensation to these railroads which, during the time of the war, were not allowed to charge any

more for service than they were allowed in antewar times? Other corporations that were not regulated by the Government could charge according to the demand made upon them for the service rendered. All equipment, all the material, such as steel and iron products and wood products, all have soared beyond any reason. Now, these railroads were still restricted to the antewar returns for the use of their property. During the time of the war any equipment that they have to replace, that is burned or lost, and the prices that they have got to pay for the materials, have advanced without Government restriction. Do you think that ought to be taken into consideration at all in computing what we ought to pay them?

Mr. BRISTOW. I do not think when the Government is guaranteeing a return and asking the general public to pay it that it ought to guarantee war profits to any corporation.

The CHAIRMAN. These are not war profits.

Mr. BRISTOW. Yes, they are. These three years include the two years that have produced the most amazing returns.

The CHAIRMAN. Those are the profits which grew from increased volume, but not increased prices to the shipper.

Mr. BRISTOW. But it is profits. They made more money by it, they used their plant to a greater capacity, but the earnings are there; they have gone to over a billion a year, in 1916 and 1917.

The CHAIRMAN. It certainly costs more to handle that increased volume than it did the smaller volume, even though there might have been a per cent, a large per cent of increase.

Mr. BRISTOW. That is all accounted for, Senator. After all of this cost that you have referred to has been met, still the net profits for these years are larger than they ever were before.

The CHAIRMAN. That is true. Net profits on almost everything else.

Mr. BRISTOW. Yes. But do you propose to guarantee during the future?

The CHAIRMAN. No; I am restricting it to the war period. I am not talking about the future; I am talking about taking this property under the same conditions that we take them under and rendering them the return they would have gotten had we let them alone, and then at the end of the war, as a matter of course, as conditions become normal and we turn them back, they will find themselves just in the same position as when we took them.

Mr. BRISTOW. Then, Senator, when you do that you guarantee that the investors in these big railroads shall take no chances of any depression in our industrial or commercial life—they shall have the biggest return through this war, even if all other business goes to pieces.

The CHAIRMAN. Well, we deprive them of the opportunity.

Mr. BRISTOW. And to guarantee to them these enormous profits against loss as the result of industrial depression, in my opinion, is unfair to the public.

Senator ROBINSON. Mr. Chairman, it is about 5 o'clock, and I would suggest that we go into executive session.

Senator CUMMINS. I want to say to the committee that there is one witness who has been here about 10 days and he is compelled to go away. It is imperative, and I would like to get him to go on the stand.

The CHAIRMAN. If there is no objection on the part of the committee, we will have Mr. Thorne go on the stand. The hour of 5 o'clock having arrived, we will go into executive session.

Mr. BRISTOW. Senator Poindexter has asked that I appear here to-morrow morning to answer some questions that he propounded. I am practically through, but I will be glad to answer any questions he wishes answered.

The CHAIRMAN. Are you willing to wait until Mr. Thorne is through?

Senator POINDEXTER. That is for Senator Bristow and Mr. Thorne to decide. Whoever can wait with the least inconvenience, is the way to arrange that. If Senator Bristow can be here later, it is entirely satisfactory to me. It does not take very long to finish with him.

The CHAIRMAN. Mr. Thorne will appear to-morrow morning at 10 o'clock.

(The committee adjourned its open session until January 22, 1918, at 10 a. m., and went into executive session.)

GOVERNMENT CONTROL AND OPERATION OF RAILROADS.

TUESDAY, JANUARY 22, 1918.

UNITED STATES SENATE.
COMMITTEE ON INTERSTATE COMMERCE,
Washington, D. C.

The committee met, pursuant to adjournment, at 10 o'clock a. m., in the hearing room of the committee, Capitol Building, Senator Smith of South Carolina presiding as chairman.

STATEMENT OF MR. CLIFFORD THORNE, COUNSEL FOR VARIOUS SHIPPERS' ORGANIZATIONS.

The CHAIRMAN. The committee will come to order. Mr. Thorne, will you state to the stenographer, please, your name and address and your official capacity—the object of your appearance here.

Mr. THORNE. Mr. Chairman and gentlemen of the committee, my name is Clifford Thorne, my address Lytton Building, Chicago. I am here representing certain national organizations of shippers.

Senator POMERENE. Will you please name the organizations as you go along, if you can?

Mr. THORNE. I am attorney for the National Federation of Shippers, general counsel for the Western Oil Jobbers Association, commerce counsel for the Western Petroleum Refiners Association, general counsel for the National Association of Cooperative Elevators, assistant counsel for the National Live-Stock Shippers Protective League, and general counsel for the Corn Belt Meat Producers Association.

The grain association has a membership of several hundred thousand grain producers; the live-stock association has a representation of all the principal live-stock shippers' organizations in the United States. The Corn Belt Producers Association is an organization of 4,000 stock shippers, and the Petroleum Refiners Association is composed of practically all the principal independent refiners in the West. I simply have recited this at the request of your chairman.

Senator CUMMINS. Were you formerly a member of the Iowa Railroad Commission?

Mr. THORNE. For four years I was its chairman. I was also president of the National Association of Railway Commissioners.

Senator CUMMINS. And have you represented what might be called the shipping side of the rate controversy before the Interstate Commerce Commission for the last few years?

Mr. THORNE. Yes; I was a member of the committee representing the National Shippers' Conference before the Interstate Commerce

Commission in the recent Fifteen Per Cent Rate case, and in former cases I have been active.

Gentlemen, I have prepared a preliminary statement that may facilitate my presentation later. If you will bear with me until this is concluded, then I will take up the different propositions.

This measure involves the greatest financial transaction in recorded history. Those for whom I am speaking are in hearty accord with the main purposes of this legislation, but it would be strange indeed if the first draft of a bill involving a matter of this magnitude were perfect in every respect. We submit two suggestions for your consideration.

First. We suggest that the Interstate Commerce Commission should continue to have jurisdiction over rates.

This measure, as interpreted by the gentleman who is said to have written the major portion of it, together with the proclamation, takes away the power of the commission and places another tribunal in control over rates as well as operation.

We freely concede the necessity for Mr. McAdoo to be in supreme command over the operation of our railroads; but control over operation does not carry with it the control over either the compensation of any individual service or the compensation for the entire service.

It may be necessary to decide matters of operation instantaneously without an adequate hearing. That is probably essential in the emergency which confronts us. But that is not true of the compensation for that service.

If Mr. McAdoo is going to decide these rate cases, then we want him to conduct the hearings. We do not want to try a case before one tribunal and have another department or another man decide the case. We do not quite see how the granting of a full hearing and the fair, reasonable, sane determination of these issues in accordance with the laws of the land is going to help the Kaiser. If that be true, then abolish your courts and commissions and let us revel in one grand spree of monarchical dictatorship and star-chamber proceedings. In these days of confusion and excitement we must remember that we still have a Constitution. The citizens of the United States still have rights that are worthy of your respect.

Under the compelling force of a war power it may become necessary at some future time to abolish all ordinary methods of conducting business, making and administering laws, and hearing cases; it may become necessary to eliminate State legislatures, governors, Congress, and the courts. But I think we will agree that such an emergency has not arrived as yet.

We sincerely hope that you will preserve the existing governmental machinery, not for controlling operation, but for controlling the rates of compensation for transportation services rendered by railroad companies. This can be accomplished by adding a clause of two or three lines reserving full jurisdiction in the Interstate Commerce Commission over rates for transportation in accordance with the provisions of the act to regulate commerce and the amendments thereto.

For 15 years the railroads have struggled to destroy the effectiveness of the commission. First they sought to make the courts supreme, but Congress and the Supreme Court have made the commission's decisions final on matters of fact. That tribunal now

stands second in importance to none in the Nation, save only that of the Supreme Court. Next they tried to create and to pack another tribunal known as the Commerce Court, which would be superior to the commission and rob it of its power. Again they failed. If this bill now pending becomes a law, within six months that commission as a vital force in our system of government, with its history of splendid achievements, will have passed into oblivion and will be classed as one of the "has beens," one of the curious but interesting relics of other days.

If you place one man or a group of men over the commission, you destroy its power and usefulness. It will become once more an advisory body—industrious, well meaning, and with good intentions, perhaps, but helpless and ineffectual, just as it was during the first 18 or 20 years of its history.

It is proposed to do this at a most crucial time, when the shipper will need the protection of the commission more than ever before in our industrial history.

It took years of bitter struggle and many battles were fought before legislatures and committees in Congress and in court before that tribunal reached its present position of great power and usefulness. Disregarding all questions of a technical and legal character based upon the provisions of the Constitution and statutes—as a simple matter of justice between man and man—why should the rights of a railroad be any more sacred than are those of a shipper?

You disrupt the operation of railroads as they were formerly conducted by these companies and likewise you disrupt the manner of shipping and routing of commodities which the shippers have enjoyed in the past.

You leave the question of compensation as between the railroad and the Government to a voluntary contract between them or to a formal hearing before the Court of Claims, where the parties will be given an adequate opportunity to be heard. Likewise you should leave the question of compensation between the shipper and the Government to a full hearing before the Interstate Commerce Commission with an adequate opportunity for all parties to be heard. One is just as reasonable as the other.

The determination by the proper tribunal after full hearing of the compensation to be paid by the Government to the railroads does not disrupt the Government operation of the railroads; and likewise, the determination by the proper tribunal after full hearing of the compensation to be paid by the shipper to the Government will not disrupt the governmental operation of the railroads.

Second. We recommend a change in the compensation to be paid to the railroads.

We should approach the question of compensation, not in a spirit of dickering, of making a trade, but with the object of dealing with the subject along broad lines, of trying to render substantial justice to these railroads and to the public.

I will say there are various schemes that have been proposed and suggestions made by other parties. I will have some suggestions to be made as to the legal phases of the suggestion that I have to offer, and I am anxious at the outset that the position I take shall not be misunderstood.

The basis provided in this bill for arriving at the compensation to be paid by the public for the use of a governmental agency is contrary to the principles laid down in the unanimous decision of the Interstate Commerce Commission in the 1910 Western Advance Rate case. Mr. Secretary Lane wrote that opinion while he was a member of the commission. At that time he was not in politics, but was acting in a judicial capacity, after the evidence and argument had been submitted in one of the greatest cases of this generation. This method of determining the compensation to which a railroad is entitled is based upon principles which Mr. Lane branded as unreasonable and unjust.

Senator KELLOGG. What is the title of that case, and where do you find it?

Mr. THORNE. Western Advance Rate Case, reported in volume 20 of the Interstate Commerce Commission's decisions.

Senator LA FOLLETTE. 1910?

Mr. THORNE. Yes, sir. If the railroads demand this return I deliberately charge them with bad faith, a breach of trust with the American people. Under oath on the witness stand in the year 1910 the leading witness for the western railroads and the leading witness for the eastern railroads both asked for a surplus for the purpose of laying up a fund to tide them over lean years, to build nonrevenue producing improvements, and to maintain their credit; and both of these gentlemen declared they would not ask for this surplus ever to be capitalized. They wanted the public to pay them a reasonable dividend and to go into partnership with them on these nonrevenue-producing improvements, etc.

Senator POMERENE. Let me interrupt you to ask you who those witnesses were.

Mr. THORNE. Mr. Ripley and Mr. Willard. I shall later read the extracts from the testimony itself.

Now, it is proposed to repudiate that partnership and to have Congress place on the statute books a provision which capitalizes these surplus earnings. It is proposed to make the public pay all the interest on their debt, pay them a reasonable dividend on their stock, keep their properties up to 100 per cent of their present condition, tide them over these perilous times during the war, maintain their credit for them, build nonrevenue-producing improvements on their properties, give them a surplus with which to build railroad properties for them, and then to pay them a return on what we build. Certainly, this is a most delightful, fascinating, and charming proposition—from the railroad standpoint.

I do not believe you gentlemen will dare to stand sponsor for that proposition before the American people when the railroad presidents themselves have made these admissions under oath.

This bill furnishes absolutely no inducement for the railway company to be efficient in the performance of its duties to the public. You make a flat, inelastic, fixed guaranty, regardless of the service which the railroad may perform.

There is no uniformity in the proposed compensation. Several railroads are guaranteed annual deficits. The Colorado Midland will have a guaranty from the Government of a \$10,000,000 deficit a year for the opportunity to turn its property over to the public during the war, while the Pittsburgh & Lake Erie will be guaranteed

a profit of more than 14½ per cent on its so-called property investment. These guaranties are subject to amendment by the audit committee. The Cumberland Valley is to receive a guaranteed return in proportion to the alleged value of its property, which is twenty-five times as much as that guaranteed to the Quincy, Omaha & Kansas City. But objections of this character can be made against any plan that has been or will be proposed. The other objections to the measure of compensation under consideration which I have stated are far more fundamental in character.

It has been stated that we are following the precedent established by Great Britain. This bill guarantees to American railroads in proportion to their total capitalization over \$300,000,000 more than Great Britain saw fit to guarantee her railroads.

Senator KELLOGG. I wish you would explain that.

Senator LA FOLLETTE. Let Mr. Thorne complete his statement, and then he will do so.

Mr. THORNE. I shall be very glad to explain it, Senator Kellogg.

Senator KELLOGG. Very well.

Mr. THORNE. It is proposed in this measure to guarantee to the bondholders in American railroads all of their interest, to guarantee the stockholders all of their dividends at a rate much higher than the rate of dividend prevailing in Great Britain; and, on top of that, you propose to guarantee these stockholders a surplus above dividends approximately eight times as large as the surplus guaranteed to British railroad stockholders on the average.

While the war lasts it is proposed in effect to substitute Government bonds for railroad securities. If this measure is passed it will suddenly transform seventeen thousand million dollars' worth of railroad stocks and bonds into the equivalent of seventeen thousand million dollars' worth of Government bonds so long as the war lasts, and these securities will inevitably be in keen competition on the market with any new war bonds offered by the Government. It is a fundamental proposition that can not be contradicted that the higher you make the prevailing rate on securities generally, the more difficult will it be to sell Government bonds carrying a less rate.

In return for the 6 per cent railroad stock of the Santa Fe Railway Co. you give practically a Government bond for 10 per cent during the war. With all the wealth and power of the United States Government back of them you give, in exchange for the stock of the companies handling 75 per cent of the traffic in the eastern district, 10 per cent Government bonds, in effect, while the war lasts. You guarantee more than a 20 per cent return on the capital stock of the Burlington Railroad.

It is true that dividends can not be increased during the war proportion to their total capitalization over \$250,000,000 more than there is nothing whatsoever to prevent the Burlington from distributing these surplus earnings which will have been accumulated during the war.

What a handsome return this will be during these perilous times when so many industries will inevitably be driven to the wall, as has occurred in England, Ireland, France, and other great nations.

What industries in the United States outside those directly connected with the manufacture of munitions would not gladly welcome

such a guaranty during the period upon which we are now entering! It is not strange that 200 industrial, logging, and trolley companies scattered over the United States have petitioned Mr. McAdoo to let them in on the guaranty. They want to be taken over by the Government, God bless them for their patriotism. And two weeks ago the great express companies of the Nation had a meeting and decided to beg to be taken over by the Government on these conditions. The country is just full of this brand of patriots, wearing the dollar sign.

I suggest that the standard return to any carrier paying dividends of 5 per cent or more shall be confined to a payment of all of their interest and dividend obligations, in addition to a guaranty that we will keep the properties in good condition and maintain their credit. Let the surplus above dividends be divided equally between the railroad and the Government. That will furnish a fund for the building of improvements on the railroad property and provide a reserve to take care of the weaker lines. The stockholder and bondholder should be content if we give them a Government bond for their securities while the war lasts.

Gentlemen, we have decided what would be the most efficient method for operation during the war. We have decided it is better to leave the operation of the railroads to one man.

Senator POMERENE. What do you mean when you say "we," Mr Thorne?

Mr. THORNE. The Government. The issue before us is, what is the most efficient method of taking care of the rates of compensation to be paid for the service. If the Interstate Commerce Commission is not competent, or by the present records it would indicate that their method of conducting their affairs incapacitates them for this work, then we would cheerfully concede that that method of control should be abandoned while the war lasts, just as you have abandoned the commission regulation and operation. But it has very little control over operation that it has ever exercised.

On the other hand, if after an analysis of the situation you find, in your judgment, that the commission is the most efficient of any department of your Government to handle that phase of the work, then of course its present jurisdiction over rates and charges should be retained.

So the real question before you is which is the most efficient method. The railroads in appearing before you have produced elaborate statistics for the evident purpose of establishing in your minds the following impressions:

First, and most important of all, they want you to get in the attitude of having a liberal viewpoint. They want to leave the impression that they are in poor condition financially and need more revenue and better credit. This not only tends to support the proposed compensation, but also as an offset to any other propositions as to compensation that may be submitted to you.

Second, and incidental to that I would judge from what they have stated, they would also like to have the year 1915 eliminated from the three-year period, if possible.

Third, incidentally, they would like to have the period brought down to December 31, 1917.

Mr. Trumbull has stated that the commission found their revenues were inadequate, and instead of courageously meeting the situation by increasing their revenues, it has passed that burden over to Congress. That statement is absolutely inaccurate. It is not true. I have here in my papers a copy of the communication addressed to you by the commission, and there is not one sentence or one word in that document to the effect that the revenues of American railroads are not adequate. What they stated was that the financial markets of the country had been practically closed for the issuance of securities for the purpose of building betterments and improvements, and that something should be done to meet that situation. The capital account and the revenue account are different factors. The closing of the security markets has been equally true of practically all other industrials and public utilities.

We are all aware of the fact that it has produced that result. Even the Bethlehem Steel Corporation, with its tremendous earnings, has had to give up the flotation of bonds at a reasonable price, and sold an 8 per cent cumulative preferred stock at an 8 per cent rate with a 4 per cent commission, making 12 per cent for the first year.

Senator POMERENE. Four per cent commission?

Mr. THORNE. Yes.

Senator POMERENE. On the sale of the bonds?

Mr. THORNE. Stock, preferred. The 5½ per cent bonds of Great Britain, due in 1919, a short time ago were selling on an 8.6 per cent basis; and the Anglo-French 5s, which have behind them the credit of England and France, were selling on a 9.3 per cent basis. The city of Paris 6s were selling on a 12½ per cent basis.

The CHAIRMAN. Mr. Thorne, what was the market value for that stock; what did they receive for that stock upon which they allowed practically 12 per cent?

Mr. THORNE. I say it was on a yield of practically 12 per cent for the first year. That means if it was at par 8 per cent dividend and 4 per cent commission, it was sold at par.

The presentation of these statistics as to revenues of the carriers as justification for my claim as to the extraordinary compensation guaranteed by you under this bill, if it becomes a law, demands a review of the financial situation of the railroads. I shall do it as briefly as I can.

These tables which have been distributed are compiled from the official reports of the railroads to the Interstate Commerce Commission, and they cover the country as a whole. There have been many tables presented to you covering one portion of the country and another portion of the country, or one company or a few companies. In this document we have presented the situation as a whole for all the railroads of the United States that were reporting to the commission since practically its organization.

NATIONAL SHIPPERS' CONFERENCE.

[Exhibit No. 1, sheet No. 1.]

The accompanying table labeled "Exhibit No. 1, sheet 2," shows the tendency of revenues, expenses, and net revenues of American railways since the organization of the Interstate Commerce Commission.

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It will be noted that the net revenues from operation, above all operating expenses, during each succeeding five-year period have steadily increased. It will also be noted that net revenues above all operating expenses in 1916 were \$300,000,000 more than during the preceding year, and \$200,000,000 more than during any other year in the history of American railways.

[Exhibit No. 1, sheet No. 2.]

Tendency of revenues and expenses, American railways.

Year.	Operating revenues.	Operating expenses.	Net revenue from operation.	Increase over year 1890.
1890.....	\$1,051,877,632	\$692,093,971	\$359,783,661	.....
1891.....	1,096,761,395	731,887,893	364,873,502	.....
Average.....	1,074,319,514	711,990,932	362,328,582	4.7
1892.....	1,171,407,343	780,987,996	390,409,347	.....
1893.....	1,220,761,874	827,921,289	392,830,575	.....
1894.....	1,073,361,797	731,414,322	341,947,475	.....
1895.....	1,075,371,482	725,720,415	349,651,067	.....
1896.....	1,150,169,376	772,939,044	377,130,332	.....
Average.....	1,138,212,370	767,808,615	370,403,755	1.5
1897.....	1,122,099,773	752,524,764	369,565,009	.....
1898.....	1,247,326,621	817,973,276	429,352,345	.....
1899.....	1,313,610,118	856,968,999	456,641,119	.....
1900.....	1,487,044,814	961,428,511	525,616,303	.....
1901.....	1,588,526,087	1,080,397,270	558,128,787	.....
Average.....	1,381,719,273	883,858,564	467,860,709	21.4
1902.....	1,726,390,267	1,116,248,747	610,131,520	.....
1903.....	1,900,846,907	1,267,538,852	643,308,055	.....
1904.....	1,975,174,091	1,338,896,253	636,277,838	.....
1905.....	2,082,482,406	1,390,602,152	691,880,254	.....
1906.....	2,326,765,167	1,536,877,271	789,887,896	.....
Average.....	2,002,129,768	1,328,032,658	674,097,113	57.1
1907.....	2,589,105,578	1,748,515,814	840,589,764	.....
1908.....	2,393,805,989	1,669,547,876	724,258,113	.....
1909.....	2,418,677,538	1,599,443,410	819,234,128	.....
1910.....	2,750,667,435	1,822,630,433	928,037,002	.....
1911.....	2,789,761,669	1,915,054,005	874,707,664	.....
Average.....	2,588,408,642	1,751,088,308	837,365,334	112.7
1912.....	2,842,685,382	1,972,415,776	870,279,606	.....
1913.....	3,125,135,798	2,169,968,924	955,166,874	.....
1914.....	3,047,019,908	2,200,313,159	846,706,749	.....
1915.....	2,956,193,202	2,088,682,956	867,510,246	.....
1916.....	3,396,806,234	2,220,004,233	1,176,802,001	.....
Average.....	3,073,570,505	2,130,277,010	943,293,495	165.9
1916 (Class I) ¹	3,407,507,382	2,227,536,811	1,179,970,571	.....
1917 (Class I) ¹	3,824,419,789	2,581,836,611	1,242,583,178	.....

¹ The 1916 and 1917 figures include switching and terminal companies, but do not include Class II & III companies. One would tend to offset the other; the results are fairly comparable.

[Exhibit No. 1, sheet No. 3.]

NOTE.—Compiled from reports of the statistics of railways in the United States prepared by the Bureau of Statistics and Accounts of the Interstate Commerce Commission, the text for the 1915 report, and the annual report of the Interstate Commerce Commission by Congress for 1916. Statistics for 1912 and 1914 cover Class I and Class II roads, or those whose operating revenues exceed \$100,000. Earnings for 1915 cover Class I, II, and III railroads. Statistics for 1916 are those shown in the thirtieth annual report to Congress and only cover Class I railroads. The addition of Class II and III railroads will

further augment the earnings shown for 1916. The above figures represent substantially all the mileage in the United States. The item "Net earnings," used above, refers to the earnings from operation of all the railroads in the United States after subtracting all operating expenses, which include: (1) The cost of transportation and traffic expenses; (2) the cost of maintenance of equipment; (3) the cost of maintenance of way and structures; and (4) general expenses. The statistics subsequent to 1907 are not compiled entirely according to the rules of prior years because of changes in the rules of the commission taking effect during the fiscal year 1908, but the final results in the foregoing table are close enough to justify the comparison given above for the purpose stated.

The foregoing table excludes "outside operations" between 1907 to 1914, inclusive, in accordance with the Interstate Commerce Commission classifications and also excludes for the years 1913 and 1914 figures for Class III roads, and also excludes for the years 1915 and 1916 figures for "uncollectible revenues." But commencing in 1915 a change in the classification and division of revenues and expenses under the separate headings has occurred. This tends to make the figures slightly less comparable. However, to meet any possible objections that may chance to be raised, we here present the figures since 1907, including the figures covering the above-named items. It will be noted that no change in the tendencies occurs in any manner different than that shown in the original table.

For 1908 and subsequent years operations of switching and terminal companies not included.

Year.	Operating revenues.	Operating expenses.	Net revenue from operation.	Increase over year 1900.
1907.....	\$2,589,106,578	\$1,748,515,814	\$840,590,764	.....
1908.....	2,440,638,832	1,710,401,791	730,237,041	.....
1909.....	2,473,206,301	1,650,034,204	823,171,097	.....
1910.....	2,812,141,575	1,881,879,118	930,262,457	.....
1911.....	2,852,854,721	1,976,331,864	876,522,857	.....
Average.....	2,633,589,201	1,793,432,558	840,156,643	133.63
1912.....	2,906,415,869	2,085,067,529	871,358,340	.....
1913.....	3,208,427,649	2,248,722,702	959,704,947	.....
1914.....	3,127,729,588	2,280,415,791	847,313,797	.....
1915.....	2,956,527,224	2,088,682,956	866,844,268	.....
1916.....	3,454,959,223	2,263,126,224	1,191,832,999	.....
Average.....	3,130,611,910	2,183,201,042	947,410,868	163.33

Authorities: Figures for years 1890 to 1915, inclusive, were taken from annual statistical reports of the Interstate Commerce Commission. Figures for 1916 for Class I roads were taken from Bulletin Consecutive No. 105 of the Bureau of Railway Economics entitled "Summary of railway returns." Figures for 1916 for Class II roads were compiled from the sworn individual reports of these carriers to the Interstate Commerce Commission.

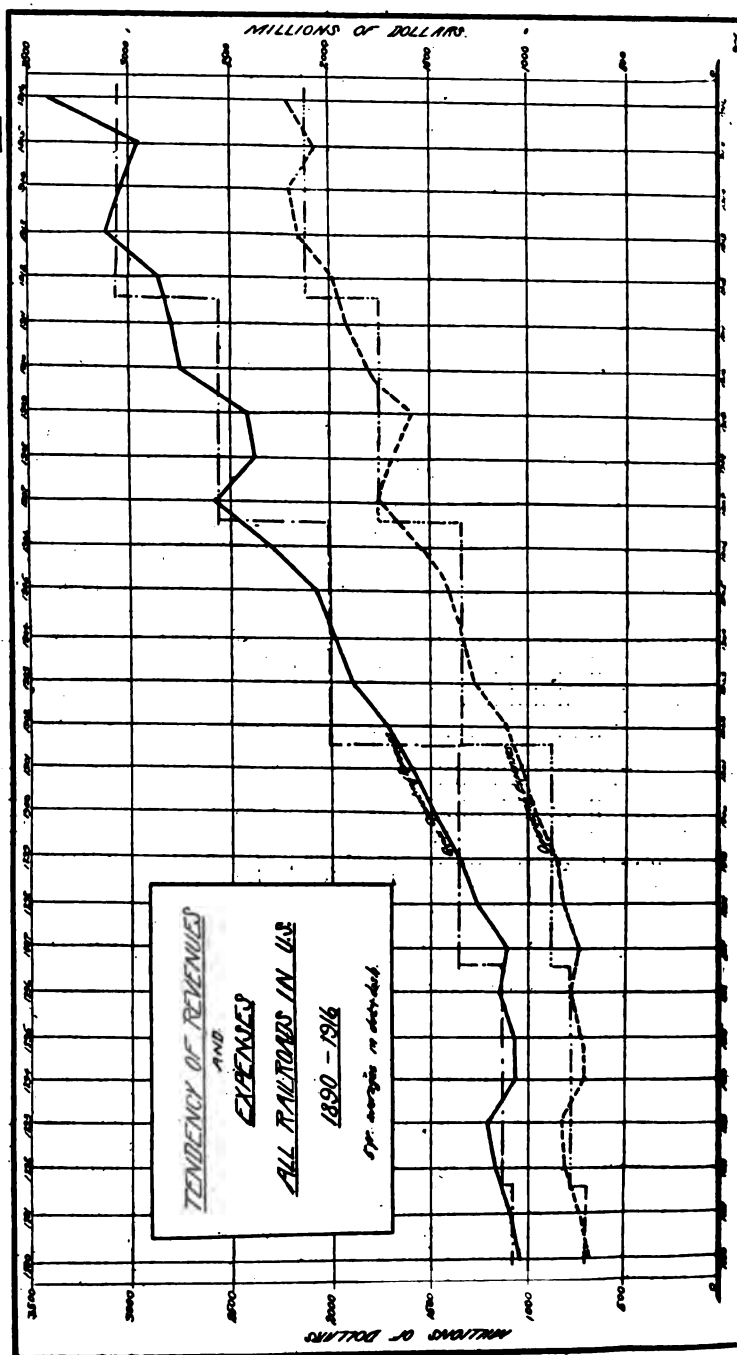
[Exhibit No. 1, sheet No. 5.]

Sometimes it has been claimed that including taxes with expenses tends to make a different showing. In order to conclusively demonstrate that this is not correct, we call attention to the following table. It will be noted that the net revenue of American railways above operating expenses and above taxes for the year 1916 were \$300,000,000 more than the year 1915 and \$200,000,000 more than during any other year.

Again, please notice the constantly steady increase in the average for the 5-year period.

NATIONAL SHIPPER'S CONFERENCE

Exhibit No. 1
Sheet 1



[Exhibit No. 1, sheet No. 6. Includes "Outside operations."]

Year.	Total revenues.	Total expense (including taxes).	Net revenue.	Increase over year 1890.
1890.....	\$1,051,877,632	\$723,301,440	\$328,576,192	.....
1891.....	1,096,761,395	765,167,988	331,593,407	.....
Average.....	1,074,319,514	744,234,714	330,084,800	0.46
1892.....	1,171,407,343	815,051,491	356,355,852	.....
1893.....	1,220,751,874	864,435,988	356,315,886	.....
1894.....	1,073,361,797	769,539,596	303,822,201	.....
1895.....	1,075,371,462	765,552,818	309,818,644	.....
1896.....	1,150,169,376	812,959,835	337,209,541	.....
Average.....	1,138,212,370	805,507,951	332,704,419	1.26
1897.....	1,122,089,773	795,662,608	326,427,165	.....
1898.....	1,247,325,621	861,801,500	385,524,121	.....
1899.....	1,313,610,118	903,306,631	410,303,487	.....
1900.....	1,487,044,814	1,009,760,784	477,284,030	.....
1901.....	1,588,526,037	1,081,341,642	507,184,395	.....
Average.....	1,351,719,272	930,374,633	421,344,639	28.23
1902.....	1,726,380,267	1,170,714,184	555,666,083	.....
1903.....	1,900,846,907	1,315,385,421	585,461,486	.....
1904.....	1,975,174,091	1,400,592,607	574,581,484	.....
1905.....	2,062,482,406	1,454,076,831	608,405,575	.....
1906.....	2,325,765,167	1,611,662,886	714,102,281	.....
Average.....	2,002,129,768	1,390,486,986	611,642,782	86.15
1907.....	2,589,105,578	1,828,828,189	760,277,389	.....
1908.....	2,440,638,882	1,789,075,585	651,563,297	.....
1909.....	2,473,206,801	1,735,173,758	738,033,043	.....
1910.....	2,812,141,575	1,979,913,711	832,227,864	.....
1911.....	2,852,854,721	2,078,989,021	773,865,700	.....
Average.....	2,633,589,201	1,882,396,053	751,193,149	128.62
1912.....	2,906,415,869	2,148,876,134	757,539,735	.....
1913.....	3,208,427,649	2,370,728,126	837,699,523	.....
1914.....	3,127,729,588	2,420,007,311	707,722,277	.....
1915.....	3,955,527,224	2,226,458,215	1,729,069,009	.....
1916.....	3,454,969,223	2,412,335,991	1,042,633,232	.....
Average.....	3,130,611,910	2,315,681,155	814,930,755	148.02
1916 (Class I) ¹	3,407,507,382	2,375,506,130	1,032,001,252	.....
1917 (Class I) ¹	3,824,419,739	2,753,875,787	1,070,543,952	.....

¹ The 1916 and 1917 figures include switching and terminal companies but do not include Class II or III companies. One would tend to offset the other; the results are fairly comparable.

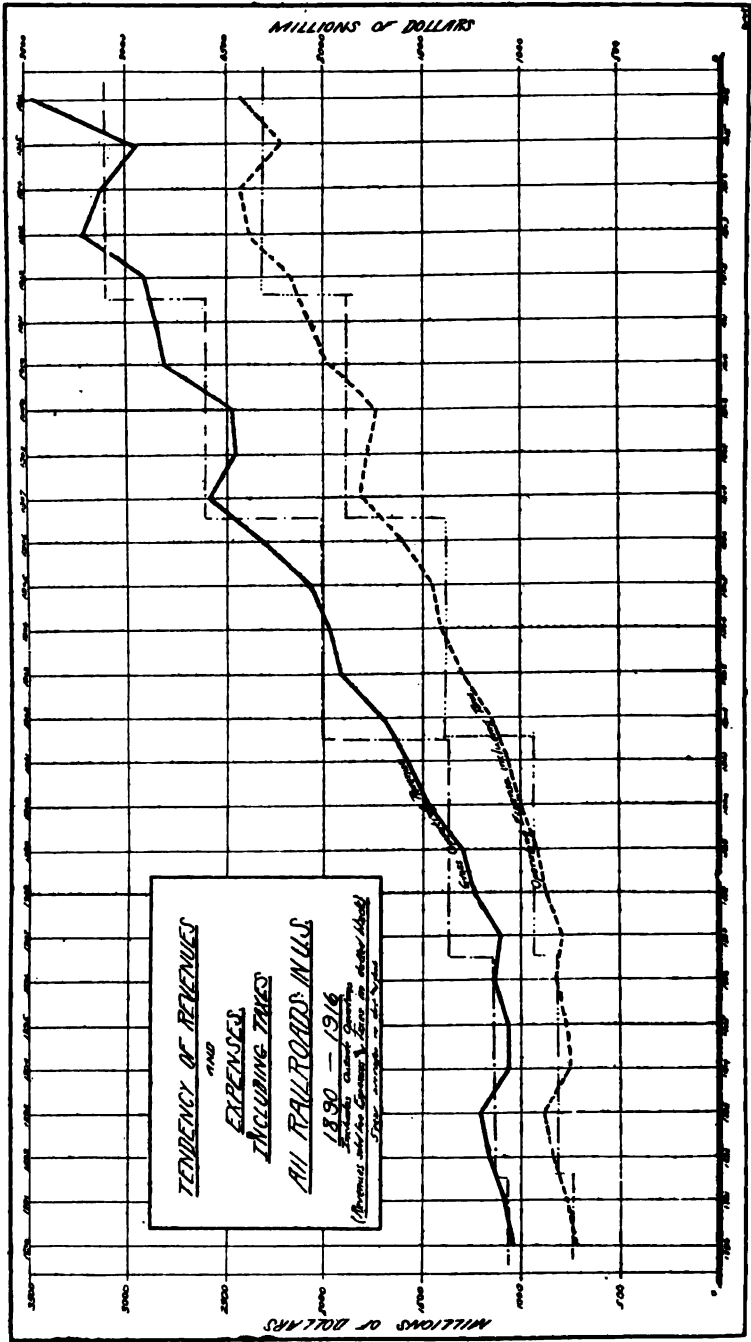
[Exhibit No. 1, sheet No. 8.]

The units of comparison generally adopted in discussing tendencies of earnings of railroads have been the mile of line and the train-mile.

The following table shows tendencies of earnings, both gross and net, on American railways from the organization of the Interstate Commerce Commission down to and including the year 1916. It will be noted that the net revenues from 1892 and 1896, inclusive, a period of depression, declined approximately 7 per cent; during the next five-year period there was a very substantial advance, amounting to over 7 per cent in excess of 1890; the next five-year period shows an increase of more than 38 per cent over 1890; the next five-year period, 42 per cent; and the next five-year period, 62 per cent. The net revenues from operation of American railways in 1916 were greater per mile of line than during any other year in their history.

NATIONAL SHIPPERS' CONFERENCE

Exhibit No. $\frac{1}{7}$
Sheet $\frac{1}{7}$



[Exhibit No. 1, sheet No. 9.]

Tendency of revenue and expenses per mile of single track operated, all operating railroads, American railways.

Year.	Revenue from operation.	Expense of operation.	Net revenue from operation.	Increase over year 1890.
1890.....	\$6,725	\$4,425	\$2,300	.....
1891.....	6,800	4,538	2,262	.....
Average.....	6,763	4,482	2,281	¹ 0.83
1892.....	7,213	4,809	2,404	.....
1893.....	7,190	4,876	2,314	.....
1894.....	6,109	4,163	1,946	.....
1895.....	6,060	4,083	1,967	.....
1896.....	6,320	4,248	2,072	.....
Average.....	6,576	4,436	2,140	¹ 6.98
1897.....	6,122	4,106	2,016	.....
1898.....	6,755	4,430	2,325	.....
1899.....	7,005	4,570	2,435	.....
1900.....	7,722	4,993	2,729	.....
1901.....	8,123	5,268	2,855	.....
Average.....	7,145	4,673	2,472	7.48
1902.....	8,625	5,877	3,048	.....
1903.....	9,258	6,125	3,133	.....
1904.....	9,306	6,308	2,998	.....
1905.....	9,568	6,409	3,159	.....
1906.....	10,480	6,912	3,568	.....
Average.....	9,449	6,266	3,183	33.39
1907.....	11,383	7,687	3,696	.....
1908.....	10,589	7,421	3,168	.....
1909.....	10,506	7,009	3,497	.....
1910.....	11,677	7,814	3,863	.....
1911.....	11,586	8,026	3,560	.....
Average.....	11,155	7,697	3,558	54.76
1912.....	11,633	8,145	3,488	.....
1913.....	12,658	8,872	3,786	.....
1914.....	12,192	8,886	3,306	.....
1915.....	11,475	8,109	3,366	.....
1916.....	13,834	9,062	4,772	.....
Average.....	12,353	8,615	3,738	62.82
1916 (class I) ²	14,814	9,683	5,131	.....
1917 (class I) ²	16,563	11,181	5,382	.....

¹ Decrease.² The 1916 and 1917 figures include switching and terminal companies, but do not include class II or III companies. One would tend to offset the other, the results are fairly comparable.

The foregoing are taken from the statistical reports of the International Commerce Commission, and are subject generally to comments contained in the footnote to the table shown on Exhibit No. 1, sheet 2.

[Exhibit No. 1, sheet No. 10.]

The foregoing table showing the revenues, expenses, and net revenue per mile of line includes outside operations. The commission during the past two years has included these with their operating revenues. In view of criticisms made by some relative to revenues per mile of line, including outside operations, we here present the same figures, excluding outside operations, for the years 1908 to 1914, inclusive, the years when they were compiled in that manner in the commission's reports. It will be noted this does not effect the tendencies.

Year.	Revenue from operation.	Expense of operation.	Revenue from operation.	Year.	Revenue from operation.	Expense of operation.	Revenue from operation.
1908.....	\$10,385.54	\$7,243.35	\$3,142.19	1912.....	\$11,377.51	\$7,894.33	\$3,483.18
1909.....	10,274.66	6,794.52	3,480.14	1913.....	12,329.40	8,561.04	3,768.36
1910.....	11,421.58	7,568.10	3,853.48	1914.....	11,877.04	8,576.65	3,300.39
1911.....	11,329.53	7,777.25	3,552.28				

[Exhibit No. 1, sheet No. 11.]

*Tendency of revenues and expenses per train-mile, all operating railroads.
American railways.*

Year.	Revenue from operation.	Expense of operation.	Net revenue from operation.	Increase over year 1890.
1890.....	\$1.44231	\$0.96006	\$0.48225	.....
1891.....	1.43345	.95707	.47638	.....
Average.....	1.45675	.96544	.49131	\$1.08
1892.....	1.44649	.96580	.48069	.....
1893.....	1.43229	.97272	.45957	.....
1894.....	1.36958	.93478	.43480	.....
1895.....	1.35947	.91829	.44118	.....
1896.....	1.39567	.93838	.45729	.....
Average.....	1.42228	.95977	.46301	13.99
1897.....	1.38194	.92918	.45276	.....
1898.....	1.45449	.96635	.48814	.....
1899.....	1.50436	.98390	.52046	.....
1900.....	1.65721	1.07288	.58433	.....
1901.....	1.72938	1.12292	.60646	.....
Average.....	1.59373	1.0421	.55162	14.38
1902.....	1.82350	1.17900	.64450	.....
1903.....	1.91380	1.26604	.64776	.....
1904.....	1.93960	1.31375	.62585	.....
1905.....	1.97906	1.32140	.65766	.....
1906.....	2.07547	1.37060	.70487	.....
Average.....	2.03815	1.35192	.68623	42.30
1907.....	2.17741	1.46993	.70748	.....
1908.....	2.11269	1.47340	.63929	.....
1909.....	2.16789	1.43370	.73419	.....
1910.....	2.24628	1.48965	.75663	.....
1911.....	2.24824	1.54338	.70486	.....
Average.....	2.21600	1.49911	.71689	48.66
1912.....	2.29259	1.59077	.70182	.....
1913.....	2.45387	1.70375	.75012	.....
1914.....	2.46024	1.76917	.69107	.....
1915.....	2.51895	1.77641	.74254	.....
1916.....	2.81146	1.84161	.96985	.....
Average.....	2.54465	1.77457	.77008	58.99

1 Decrease.

The first is marked "Sheet No. 2, Exhibit 1," and shows the net revenues from operation, operating revenues, and operating expenses. There are two significant facts there worthy of notice: First, the increase over 1890 for the first two-year average there is less than 1 per cent. The next five-year average is almost 3 per cent, the next five-year average is 30.04, the next 87.36 per cent, and the next 132.74 per cent, and the last five years, 162.18 per cent.

Senator KELLOGG. I do not understand that.

Mr. THORNE. This shows the average net revenue from operation during the five years ending with that of 1916, as compared to the year 1890, and correspondingly for the other five-year periods.

Senator KELLOGG. That is, the operating revenue for 1916 increased 162.18 per cent over 1890?

Mr. THORNE. No; the average for the five years ending 1916 exceeds that of 1890 162.18 per cent.

Senator KELLOGG. Do you show the figures for increase of capital?

Mr. THORNE. I would be very glad to present that later, Senator.

Senator KELLOGG. Then, that is not an increase of 162.18 per cent on the same capital?

Mr. THORNE. Not at all; I have here merely stated the net revenues. It is more than that, I believe, on capital. The average dividend paid by American railroads, I should think—and I will present the exact figures for the record—is at least, I will say, safely, two or three times the average dividend when the commission commenced its work.

Senator GORE. Will you repeat the last few words?

Mr. THORNE. The average dividend rate last year was two or three times what it was when the commission commenced its operations.

The second significant factor is the very high level in 1916 and 1917. You will notice that the net revenues for those two years surpassed any other year in our history. You will notice that 1916 was a phenomenal year.

The year 1916 appears twice there because it was necessary to get a figure comparable to the 1917 figures, and the only 1917 figures we had available were as to class 1 railroads.

The 1916 figure exceeds that of any other year by more than \$200,000,000, and exceeds 1915, the next preceding year, by over \$300,000,000.

Senator WATSON. Mr. Thorne, could I interrupt you to ask a question?

Mr. THORNE. Certainly.

Senator WATSON. I want to just get your viewpoint. I understand you to say that the dividends paid in 1916 were two or three times those in 1890. In 1890 the commission was just beginning to operate and has been operating all these years.

Mr. THORNE. Yes, sir.

Senator WATSON. Yet the revenues have been very much larger, but what is more consequential for the purposes of this inquiry, the dividends paid have been two or three times as great. Is that an argument in favor of the commission continuing to handle the finances of the railroads and determine rates, or is that an argument against it?

Mr. THORNE. It is an argument in support of the proposition that commission regulation has been of very great benefit to the railroads. I do not go to the extent suggested, possibly, by your inquiry.

Senator WATSON. Personally I am in favor of the commission fixing the rates, but I was wondering what your argument was in that connection, whether or not you were in sympathy with this increase or against the increase; if against it, now, you could produce an argument in favor of the commission continuing to fix rates, when they had permitted this great return on the capital invested.

Mr. THORNE. I have cited you the facts in support of the proposition that commission regulation has been of very great benefit to the railroads.

The CHAIRMAN. Let me understand this table. There is 0.71 per cent between 1890 and 1891. You mean they allowed an increase of dividend in 1891 of 0.71 per cent over what they had in 1890?

Mr. THORNE. That is not dividends, Mr. Chairman; that is the net revenue from operation.

The CHAIRMAN. The commission allowed that 0.71 per cent over what they allowed in 1890?

Mr. THORNE. Yes; but, Mr. Chairman, it would be hardly fair to say the commission allowed that. At that time the commission had no power to limit their revenues.

Senator POMERENE. That is what they received?

Mr. THORNE. Yes; that is all.

The CHAIRMAN. He was speaking about the increase being 162.18 per cent, that their increased net revenue was 162.18 per cent over that of 1890, and that the commission had allowed a dividend two or three times as great.

Mr. THORNE. I did not say they allowed it. They received that amount.

The CHAIRMAN. I was just following it up, so as to get an explanation of the question that Senator Watson asked.

Senator WATSON. The commission has authority, has it not, over revenues?

Senator LA FOLLETTE. It did not have until 1910.

Senator WATSON. No; but at this time, for the last seven years, the commission has had authority over revenues, and of course the revenues received have some relation to the dividends paid.

Mr. THORNE. Yes.

Senator WATSON. Therefore, if the commission wanted to cut down the revenues paid it could have done that by cutting down the revenues received by fixing rates?

Mr. THORNE. Yes.

Senator KELLOGG. The law allowing them to fix the rates was passed before 1910.

Mr. THORNE. 1910 is the year Congress enacted the law granting the power to suspend advances in rates.

Senator WATSON. I was just seeking to get your viewpoint.

Mr. THORNE. My viewpoint is simply as I stated, Senator; it shows the liberal attitude of the commission toward the carriers.

Senator KELLOGG. I do not understand your net revenue from operations. It does not compare with the figures the commission has submitted to us. What is the reason for the difference?

Mr. THORNE. If you will examine the commission's report to you you will find, perhaps, that they have included class 2 roads, or they have included terminal and switching companies, etc. The figures I have given you here are taken from the commission's reports.

Senator POMERENE. And include all roads?

Mr. THORNE. Include all roads in the United States reporting to the commission.

Senator LA FOLLETTE. The commission's figures were only partial.

Mr. THORNE. The last two lines only apply to class 1 roads, if you will notice, by the typewriting. On the following page we have some

recompilations, taking care of changes in accounting rules. It is frequently said that the figures are not comparable to those of previous years. There were very substantial changes in 1907. I am not going to take time to discuss that. I have simply demonstrated after making allowance for those changes that it has no substantial effect whatever on the tendency I have described to you.

The next sheet, labeled 4, is a diagram showing these tendencies graphically. The upper line represents gross operating revenues, and the lower line the operating expenses; the margin between the two represents the net.

You will notice there a constant increase in that margin. Another fact worthy of remembrance is that simply because it happens to go down at one time is absolutely meaningless as representing any tendency. You have got to consider an extended period of time. For instance, in 1893 it went down, to 1894, and then remained practically stationary to 1895. That did not mean anything; it went up afterwards. You take it in 1907, it went down, and in 1908, but without an advance in freight rates.

Senator POMERENE. Why do you say it does not mean anything, Mr. Thorne?

Mr. THORNE. As illustrating the tendency, because it is too short a period.

Senator POMERENE. Due to mere temporary conditions?

Mr. THORNE. Yes, sir. There is a rise and fall in all business on earth, and I have an exhibit here demonstrating that very conclusively, as to railroads especially. The greatest danger of all is for us to see only a little portion of the tendency and conclude that that represents the whole situation.

Senator POMERENE. In other words, a condition such as was brought about by the floods in Ohio does not show a general tendency?

Mr. THORNE. And, again, the falling off of crops in 1914 reduced revenues of railroads and everybody else. There are trade conditions throughout the world that rise and fall just like the waves on the ocean. As you see the smaller waves coming in, smaller and smaller, you would not thereby conclude that the whole level of the ocean was going down because there was another large wave coming on later.

Senator KELLOGG. Are you speaking about this diagram here now?

Mr. THORNE. I was.

Senator KELLOGG. I would like to ask you a question about that. This diagram is based on the aggregate in dollars of net revenue?

Mr. THORNE. It shows the gross and expenses.

Senator KELLOGG. It shows the gross and the expenses?

Mr. THORNE. Yes.

Senator KELLOGG. The difference between the two is supposed to be the net revenue?

Mr. THORNE. That is correct.

Senator KELLOGG. So that these lines, these diverging lines, represent the increase in net revenue?

Mr. THORNE. Yes, sir.

Senator KELLOGG. From 1890 to 1916, in dollars?

Mr. THORNE. Yes, sir.

Senator KELLOGG. Naturally they would diverge. If there had been no increase in percentage, they would diverge, because there is an increase of capital, is there not?

Mr. THORNE. Certainly; you are entirely correct. This diagram merely states what I have said. It shows the revenues and expenses, and I will discuss the capital presently.

Senator KELLOGG. How does it mean anything if it does not show the percentage of income?

Mr. THORNE. It means exactly what I said, and I will be very glad to discuss the question of property and capital in a few moments.

Senator KELLOGG. I did not ask you to discuss it ahead of time. I am just asking the question to get at the facts.

Mr. THORNE. It means what it states. It is a falsehood that has been circulating over the United States that the net revenues of railroads have declined.

The next table is merely an effort to exclude taxes. Some statements have been made that if you allow for taxes it changes the situation, but this table demonstrates conclusively that after you have deducted taxes it does not have any effect whatsoever on the result.

The next table shows the same tendency per mile of line.

The next table shows the tendencies per train mile, and the diagram shown on page 14 illustrates the situation in the eastern district just as our former diagram illustrated it in the United States as a whole.

The next diagram is the western district.

The next exhibit shows the southern district.

Senator ROBINSON. How many districts do you divide the country into—three?

Mr. THORNE. Yes, sir. Those are the ones that you are probably familiar with. I do not need to take time describing them.

Senator ROBINSON. No; I just wanted to understand it.

Mr. THORNE. You will notice the net revenues in the southern district are much less than in the others, but the increase in the southern district far exceeds the increase in other districts.

Senator POMERENE. I assume these tables are incorporated in the record.

Mr. THORNE. Senator Kellogg, I am going now to address myself to the subject you were asking about.

Senator POMERENE. I suppose they are included in the record.

The CHAIRMAN. If the committee so desires, without objection, this exhibit will be incorporated.

Senator LA FOLLETTE. All of them presented by Mr. Thorne?

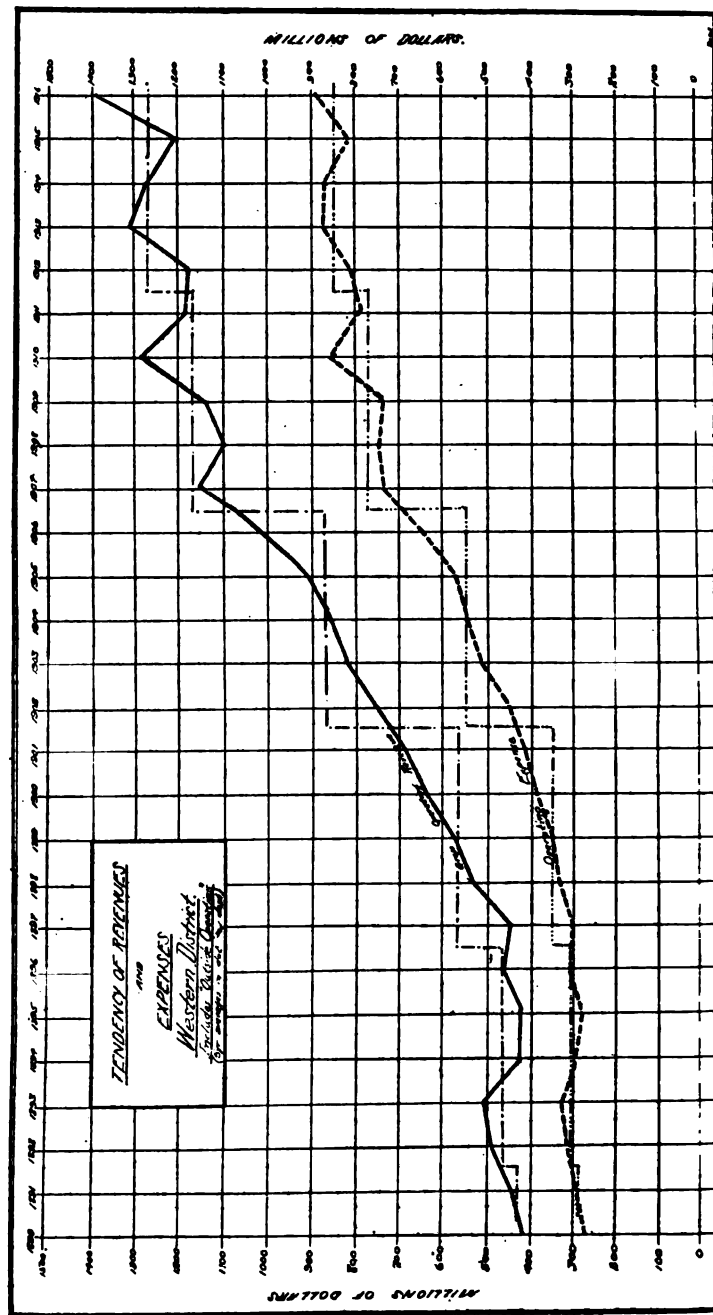
The CHAIRMAN. All these tables will be incorporated.

(The tables referred to in the foregoing discussion will appear in a former part of Mr. Thorne's testimony.)

Mr. THORNE. The statement has been made here in regard to the net revenues not representing the ratio of the capital, and it might be interesting for us to consider capital just at this time, although I had intended to discuss it later.

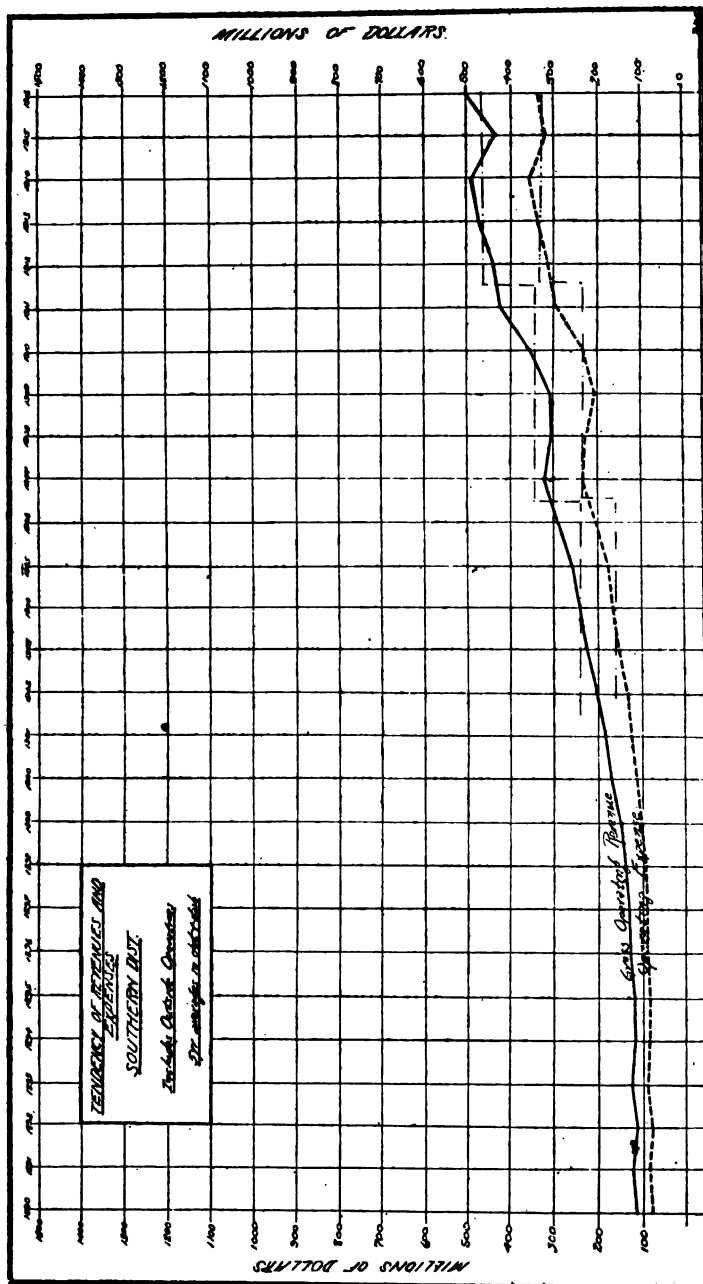
Senator POMERENE. Before you go to that, I wanted to ask you a question. Your attention was called by Senator Kellogg to the large increases shown on sheet No. 2. Of course, you had no reference here to the capital or investment account, and, taken in and of themselves, they are somewhat misleading, unless we show the relation of these

NATIONAL SHIPPERS' CONFERENCE
 Exhibit No. 1
 Sheet "II"



NATIONAL SHIPPERS' CONFERENCE

Exhibit No. 1
Sheet 10



revenues to the capital account or investment account. Taking into consideration the increases in capital or in investment, etc., are you able to state what the increases in revenue were?

Mr. THORNE. Senator Pomerene, with reference to your first statement, that there is anything misleading, I beg your pardon.

Senator POMERENE. I do not intend to insinuate by that that you have been misleading, but to one who is reading the record they are somewhat misleading, because, as we all know, and as is conceded here, the investment in railroad properties has increased during these years, but whether it has increased in the same ratio that the earnings have increased is not apparent thus far.

Mr. THORNE. The statement that the figures are misleading I think is an error. The figures show exactly the tendencies of net revenues, and the statement has been made so constantly that net revenues have declined. That exhibit is confined to an impeachment of that kind of claim, because it is false.

I desire now to discuss the subject of capital and property as related to net revenues.

Senator GORE. You are taking net revenues in the absolute and not relative to capital and investment.

Mr. THORNE. I desire now to discuss that.

Senator KELLOGG. I do not know of anybody before this committee who has claimed that net revenues as a whole in dollars have declined during these years. If they have, I do not recollect it.

Mr. THORNE. I believe one witness stated that it is costing more to produce a dollar than heretofore.

In regard to the subject of property and capital accounts as related to revenues, the one fact that makes an analysis difficult for us in respect to that subject is that there are so many intercorporate relationships. The short lines may be owned or controlled by a parent company, and there may be capital stock outstanding of a short line and of one company which, added together, would produce a false showing. For instance, the Pennsylvania System is composed of something like 100 or more companies consolidated into one system. Any showing of tendencies as to return on capital may be exceedingly misleading unless you reduce it to system figures. The showing made by the eastern railroads in the eastern Advance Rate case is perhaps the best which has been compiled by any railroads up to the present time so far as the elimination of duplications of that character is concerned. They have attempted to compile figures for systems, and I have before me the exhibit that was introduced in the record by the railroads themselves. I had nothing to do with this compilation.

(That portion of the exhibit to which reference is made is here printed in full, as follows:)

[Authority: Carriers' Exhibit, Vol. 11, covering 38 railway systems operating in official classification territory, before the Interstate Commerce Commission in the rehearing of Ex Parte 57.]

Combined statement of 38 systems.

Years.	(1) Net income plus interest deductions; per cent of total capital obligations.	(2) Net income; per cent of capital stock outstanding.	(3) Net operating income; per cent of property investment.
1900.....	5.08	5.70	5.20
1901.....	5.33	6.46	5.35
1902.....	5.51	6.89	5.54
1903.....	5.76	7.51	5.63
1904.....	5.25	6.69	5.22
1905.....	5.45	7.34	5.57
1906.....	5.84	8.74	6.08
1907.....	6.76	8.31	6.02
1908.....	5.06	6.53	5.04
1909.....	5.39	7.41	5.33
1910.....	6.14	9.21	6.05
1911.....	5.23	6.87	5.05
1912.....	5.30	7.15	5.02
1913.....	5.57	7.71	5.19
1914.....	4.17	4.09	3.88
1915.....	4.53	4.97	4.35
1916.....	6.89	10.50	6.52
1917.....	6.18	9.04	5.71
1900-1902.....	5.31	6.36	5.37
1903-1905.....	5.48	7.18	5.51
1906-1908.....	5.54	7.54	5.70
1909-1911.....	5.59	7.53	5.47
1912-1914.....	5.01	6.31	4.68
1915-1917.....	6.52	8.20	5.53

The statements made by Mr. Trumble and Mr. Kruttschnitt were to the effect that conditions recently, in the last two years, had been harder on the eastern railroads than on the rest of the country, because of the congestion in the East.

I call your attention to the following facts: First, the net income plus interest deductions, and that means—

Senator KELLOGG (interposing). What page?

Mr. THORNE. Page 3. That means the total amount applicable to the total capitalization.

Senator ROBINSON. Will you state that again, please? Net income plus what?

Mr. THORNE. Interest deductions. The ratio of that to the total capital obligations outstanding is as follows: In 1917, the fiscal year, the ratio was 6.86.

Senator CUMMINS. Are you speaking of the entire eastern district?

Mr. THORNE. No; that is three systems. I beg your pardon. It should be page 2. The net income plus interest deduction per cent of total capital obligations in 1917 was 6.18, which was the largest, with the exception of 1916, of any year shown on this exhibit, and it goes back to 1900. In 1916 the rate was 6.89, which was absolutely the largest, without any exception, in the entire period.

The average in 1915 was 4.53, which was the lowest, with the exception of 1914.

Senator KELLOGG. Since when?

Mr. THORNE. The lowest with the exception of 1914.

Senator KELLOGG. Oh, yes.

Mr. THORNE. With regard to this 1915 figure, when one of the railway officials was on the stand the statement was made by one of the members of the committee that 1915 was not the lowest year, that 1914 was lower, and at that time the witness, Mr. Kruttschnitt, called attention to the preliminary report of the Interstate Commerce Commission, in which the commission's figures apparently showed 1915 was lower than 1914 when considering ratio to property.

I call your attention to the fact that that figure was compiled as follows: They found the average rate of the property investment per mile of line and then they found the average rate of the capital, the return per mile of line, and then they found the ratio of that average to the average. An average of an average is always a dangerous figure in statistical analysis. In fact, it is considered a fallacious method. If you take that same table in the commission's report and compare the totals, you will find that the ratio of the income to the property for 1914 was less than that of 1915; and if you will also examine a later exhibit offered by Mr. Commissioner Anderson, which was compiled by the commission itself, where totals are used, you will find there the figure for 1915 is greater than for 1914, confirming what I have just stated.

So we have in the three-year period the two best years, considering capital outstanding and net income applicable to capital, and next to the lowest year since 1900, making an average for the three years of 6.52, which is the highest average of any three-year period shown on the exhibit.

Next, there is another figure, net income per cent of capital stock outstanding. In 1917 this ratio was 9.04. In 1916, 10.5 per cent. These two percentages, gentlemen, the rate of net income to capital stock outstanding is the greatest in their history. The 1917 figure is less than 1910. The average in 1910 was 9.21. The two together produce the highest average of any other two-year period.

Senator POMERENE. May I ask are you referring to all the railroads or just to Class I?

Mr. THORNE. I am referring to all 38 systems participating in the eastern case before the Interstate Commerce Commission.

Senator POMERENE. Let me have that clearly in mind. Do these tables that you have before you now simply embrace those 38 systems?

Mr. THORNE. Yes, sir. And it embraces the rich and the poor, and the big and the little. They are all in there—every company that asked for the increase. It includes practically all the companies in the district of any consequence. There are one or two, I believe, that did not get into the total, but they are very small and do not have any effect on results. Practically the whole territory, rich and poor. It includes all their capital stock outstanding, water and all.

The average in 1915 was 4.97 per cent, which is again the lowest except 1914. The average for the three years was 8.20, which, gentlemen, is the highest average for any like period that these roads have ever seen.

Senator WATSON. That is, the average for 1915, 1916, and 1917?

Mr. THORNE. Yes, sir. There is another phase, however, of that average for 1915. Your net income must be considered in relation to your maintenance accounts. There is nothing to prevent a company increasing their maintenance very largely in a given year and thereby reduce the apparent net income. You take it during 1914, these roads with a reduced gross, increased their maintenance. Railroad officials have commonly, without any equivocation, admitted that that is largely subject to policy.

Senator POMERENE. Now, to explain that, what was the comparative expenditure for maintenance during these three years?

Mr. THORNE. I can not give you the average. I can give you the totals for each of the three years. It was the largest that they had ever had.

Senator POMERENE. What I had in mind was comparing maintenance account for these three years with similar periods in the past. What do they show?

Mr. THORNE. The maintenance allowances during these three years were the largest in their entire history.

Senator POMERENE. Were they substantially larger than they were at any other period?

Mr. THORNE. Very much larger. For instance, during 1914 came the great increase.

Senator KELLOGG. What column are you reading from?

Mr. THORNE. Under maintenance of way and structures, and maintenance of equipment. In 1913 the total maintenance was \$60,000,000 greater than ever before in this district alone. That figure is subject to check. And it stayed up on that high level. In 1917 it was \$70,000,000 greater than in 1913. That is also subject to check.

Senator GORE. Give us the totals for one year, so we will have some idea as to the ratio.

Mr. THORNE. In the United States as a whole—if I am not correct, Mr. Walker will please correct me—in the United States, as a whole, in 1913 the maintenance allowances exceeded those of any other year by at least \$60,000,000. Is that according to your memory, Mr. Walker?

Mr. WALKER. Approximately that.

Mr. THORNE. In 1917 the total maintenance in the eastern district alone was in round numbers \$498,000,000. In 1916 the total maintenance, in round numbers, was \$450,000,000; and in 1915 the total maintenance was \$403,000,000. The percentage of maintenance to revenues is the factor that was the highest in 1914 and 1915 than in the preceding or succeeding years.

It is generally customary, when a period of declining revenues comes, for the railroads to reduce their maintenance. That did not happen in 1914 or in 1915 in proportion to their revenues. If they had made the maintenance the same per cent of revenues in 1914 and in 1915, you would have found a much larger net.

As to those percentages, I will ask leave to file with my statement an exact statement of those totals and those percentages in support of that proposition. The figures that I gave a few moments ago I desire stricken from the record, and a table will be filed.

The CHAIRMAN. That may be done.

Senator KELLOGG. Let me ask you about that.

The CHAIRMAN. Senator Kellogg, I wanted to ask him if he was using the year 1914 as the basis of comparison for 1915, 1916, and 1917 in the ratio of maintenance; that is, getting your per cent of increase in maintenance account?

Mr. THORNE. I said that the per cent of maintenance to revenues was the greatest in 1914 and 1915 of any year. That is including all the roads.

Senator KELLOGG. Before you pass from that I would like to ask you about maintenance while you are on the subject. Does a figure of the total maintenance in dollars or percentage of maintenance to total revenue demonstrate alone whether the maintenance was greater or less than in previous years?

Mr. THORNE. No; the cost of material and labor may be greater.

Senator KELLOGG. The purchasing price of the dollar is involved there, is it not?

Mr. THORNE. Yes.

Senator KELLOGG. If the company in 1917 spent \$100,000,000, we will say, or \$400,000,000—all the companies—and \$300,000,000 in 1914, if material had gone up 25 to 50 per cent, maintenance would not be any greater than it was in 1914.

Mr. THORNE. You are entirely correct, Senator.

Senator GORE. That is, as to the amount of actual material and work put in the road.

Senator KELLOGG. Yes. So we have got to know how much the increase in labor and materials was in order to know just the relative amount of maintenance of the properties, have we not?

Mr. THORNE. Yes; to know it accurately, Senator, but you can do this. It will be very difficult to do what you suggest, but you do know that the cost of materials in 1916 and 1917 has been greater than in 1914?

Senator KELLOGG. Oh, yes.

Mr. THORNE. Then, if you find the per cent of maintenance in 1914 and 1915 to revenues is greater than in 1916 and 1917, that is a very significant fact when we have the declared policy of the carriers to raise and reduce maintenance generally in harmony with revenues.

Senator KELLOGG. The revenues, of course, were payable in the same dollars that the wages were payable in, so that the percentage of maintenance to revenue is not any more significant than the percentage of maintenance in former years, increasing, of course, the amount of property.

Mr. THORNE. I think you will agree entirely with me if I can make myself clear, Senator. Let me speak about that particular proposition. In 1916 you will agree with me that the cost of labor and supplies was greater, was it not, than in 1915? And yet we find the percentage of maintenance revenue was less in 1916 than in 1915.

Senator GORE. Notwithstanding the increase?

Mr. THORNE. Notwithstanding the increase to which we have referred. And, further, there are accounts that do not reflect that increase in cost of materials. The depreciation account, for instance, allowed in operating expenses, is independent of the increase of cost

of materials, practically, because what you charge to operating expenses when you replace an article is the original investment.

I have before me here a statement showing the fluctuation in that item. For instance, in 1914, the renewal and depreciation account, exclusive of repairs, on the Pennsylvania System averaged per 100 pounds tractive power locomotives \$1.98. That is in 1914, Senator, which is greater than in any other year, greater than 1917, greater than 1916, and their average cost per locomotive for that bookkeeping figure is greater than any year in their history, greater than 1916 or 1917. Per passenger train car it was less. For freight train car it was 26, which is two points below that of 1913 and above that of 1915.

In 1916 it was increased again. The increase of renewals and depreciation of locomotives on the Pennsylvania in 1913, when the Advance Rate case was pending, was over 100 per cent per locomotive in one year. Certainly, the cost of materials and supplies did not go up that much, and it stayed practically at that high figure ever since.

In 1914, when the hard times came along, instead of reducing that, they increased it still higher. In 1915, when they made a recovery in their revenues, they reduced that allowance, and in 1916 it is still lower than it was in 1914.

This statement that I have here is a photograph from the working sheets of the railroad that prepared it—the Pennsylvania System.

Senator KELLOGG. Then you think the railroad men who testified that in 1916 they should have had more maintenance for their properties were mistaken. That is, that their properties had not been maintained up to the standard that they should have been.

Mr. THORNE. I would not say that. I do not know what standard is the ideal standard for maintenance. I also know that their books might show a larger maintenance, whereas the physical maintenance did not occur because of setting it up in reserve accounts which has just as much effect on revenues as though it were expended.

Senator KELLOGG. Have you any evidence that they have set up in their reserve accounts maintenance that they have not spent?

Mr. THORNE. Oh, certainly; they all do that.

Senator KELLOGG. But except in the usual run of business, of course. They always do that.

Mr. THORNE. Certainly.

Senator KELLOGG. Depreciation, too. But more than ordinary, I mean.

Mr. THORNE. In these figures it would indicate that in recent years their maintenance has been very, very liberal. The statement that they were not adequate in 1917 I would not attempt to discuss. The point that I am trying to demonstrate to you is that in analyzing net revenues in 1914, you will take into consideration the maintenance allowance for that year in proportion to their revenues.

Senator GORE. It seems to me that your figures, Mr. Thorne, rather confirm the railroad man's contention that the total outlay on maintenance in 1917 and 1916 was less than in 1914 and 1915, notwithstanding the higher cost of material which would mean considerably less actual improvement or actual maintenance, rather, in the road-bed.

Mr. THORNE. Well, Senator Gore, do you realize 1914 and 1915, in proportion to their revenues, were the greatest in their history?

Senator GORE. That is the point I am making. Maintenance was the highest those two years.

Mr. THORNE. And the net was the lowest.

Senator GORE. The maintenance was not as high in 1916 and 1917 as it was in 1914 and 1915, notwithstanding the cost of material was higher, which would mean that the actual materials used and put into maintenance would be still more.

The CHAIRMAN. In other words, that they just had not used the material, had not got it and put it into the road.

Senator GORE. Yes, sir.

Mr. THORNE. The amount in dollars and cents was greater than was expended in maintenance in 1916 and 1917.

Senator GORE. I thought you said it was less.

Mr. THORNE. No; I said the ratio to revenue was less.

Senator GORE. Oh, I thought you were speaking of the aggregates!

Mr. THORNE. No, sir; and, in the second place, I called your attention to a figure that is independent of the cost of labor and materials, practically independent. The second important fact demonstrated by that maintenance situation is that they starved maintenance in early years or else they are overmaintaining to-day. They either starved in early years or they overmaintained recently. That being true, it would demonstrate that a comparison of net in recent years with those in the early years would not be of great significance until you properly allow for the maintenance.

Senator POMERENE. Let me put this to you in another way. Considering maintenance solely from a standpoint of the betterment of the system and not from the standpoint of dollars and cents, has it been substantially greater or less during the last three years than it was during any corresponding period? Are you sufficiently familiar with the subject to express an opinion of your own or can you refer us to students of the subject who have studied it from that standpoint and who are able to give us an opinion?

Mr. THORNE. Statements of students of that subject would vary greatly in accordance with their attitude on this whole subject, but any person who is disinterested and who would examine these tables produced by the carriers or by the commission must conclude that as a whole maintenance has been on a much higher level in recent years, the last three years if you please, than in any other period excepting the two years to which I have just referred.

Senator POMERENE. Do you mean that considering it from the standpoint of betterment? I am not sure I am using the right term, but I think you catch my thought.

Mr. THORNE. I understand the intent of your expression. Betterment is not supposed to be mixed up in the maintenance accounts.

Senator POMERENE. I understand that. I have not used it technically. I have been trying to express a thought that is in my mind, and I am not sure that I have used the right word.

Mr. THORNE. In order to further illustrate that proposition of how much higher the maintenance has been than in other years, if you exclude the year 1914, when the Advance Rate Case was pending, which figures unquestionably show very large maintenance, you

will find that the maintenance on the roads as a whole and individually are on a much higher level than in any other like period.

The conclusion, as shown by statistics of dollars and cents must be modified by a consideration of the increase in cost of materials, but when you consider the allowance for depreciation and renewals, exclusive of repairs, you have an item which is practically independent of that item because when you charge off for renewals you charge off the original investment. You do not charge the increased cost of the car or the engine. It is not proper to do so. It is true, on certain items of the account, that you do, but it is not proper. When you replace a car of the same kind with another car, you charge to capital account the excess cost of the new car over the original car. To operating expenses you charge the original cost except as it has already been taken care of out of reserves for accrued depreciation. That should make your capital account, so far as possible, correspond to your total investment, and out of replacements you take care of retiring the material that you have purchased in the past.

In the maintenance of way and structures we do not have that depreciation allowance, except as it is optional. Let us consider the renewals and depreciation account of equipment. On the Pennsylvania that factor was added in 1908. There was not a corresponding factor before that, but here in 1914, 1915, and 1916 the figure on freight cars were \$108, \$95, and \$110 per car, and per passenger cars, \$836, \$966, and \$966, and per locomotive, \$3,896, \$3,544, and \$3,989. Those figures are from 25 to 50 per cent generally above those prior to 1908.

Senator GORE. I did not quite catch that.

Mr. THORNE. I call your attention to the Baltimore & Ohio. It has kept the accounts clear through the period from 1903 to 1915. The allowance for depreciation, excluding repairs, for 1903, was \$7 per car. Today it is \$44 per car, six times as great. In 1903 the average cost per locomotive—

Senator POMERENE. You mean the depreciation was \$7 per car in 1903?

Mr. THORNE. Yes, sir.

Senator POMERENE. As a practical man, was that excessive or not, or was it too low?

Mr. THORNE. It was too low.

Senator POMERENE. How much too low?

Mr. THORNE. If the repairs did not take care of it.

Senator POMERENE. I do not know anything about what deductions should be made. I do not know whether one is too low or too high. What is your personal judgment as to what would have been a fair amount to be charged for depreciation?

Mr. THORNE. It is owing to what the company charged to repairs. I want to say in regard to that, Senator, that there is no subject that is fraught with more complications and disputes and discussions amongst accountants, both of the commission and of the carriers, than the subject of maintenance and the subject of depreciation especially.

The other day I heard this statement made that some railroads allow 6 per cent on certain classes of equipment and one-half of 1 per cent for another railroad had been allowed, and it was then stated that that conclusively proves that the one-half of 1 per cent was not adequate.

Senator POMERENE. You have studied this question as a member of the Iowa commission for years. What, in your judgment, would have been a fair average charge for depreciation?

Mr. THORNE. It is impossible to state until you know what the carrier is doing in their rebuilding. I was just trying to demonstrate that to you, Senator, and I think you will see it with me. I say that one-half of 1 per cent may be more than adequate. It is owing to whether a carrier is taking care of depreciation.

Senator POMERENE. I am from Missouri on that proposition.

Mr. THORNE. I thought you would be, and that is what I am trying to show, and I believe you will agree with me when I am through. It is owing to what the carrier is doing with his repairing and rebuilding account and its renewal account. For instance, many of these carriers have great shops where they are repairing their cars and locomotives and rebuilding them. Some railroad men I have heard testify that a car never goes out of existence. Some cars do not for a long time. It is only the item of obsolescence that makes them go out of existence. A 40-foot car can live 50 years if you rebuild it. The manager of a part of the Milwaukee testified that there were freight cars on a road going out of Dubuque, Iowa, that had been in actual use for 40 years.

Another item whereby you can take care of your depreciation is in renewals. I want to give you an illustration of how that works. It is an old illustration that gentlemen who have attended hearings where I have testified would be familiar with. Suppose you and I owned 100 bridges worth \$50,000 each and that our income was \$500,000 from those 100 bridges—toll bridges. Suppose in a certain period of time we were rebuilding 10 of those bridges annually. Every 10 years we would have a complete new set of bridges. But suppose the time comes along when the Government takes over the operation of those bridges and we desire to take advantage of the opportunity and decide to rebuild our system more rapidly, build it out of the pockets of the public, out of the Government Treasury, and instead of rebuilding 10 a year we rebuild 30 a year. The original cost was \$50,000. We charged to operating expenses when we were rebuilding 10 bridges \$500,000 a year. At that time we had a net of \$500,000. Now, when we rebuild 30 a year under renewals, under operating expenses, we charge 30 times 50, or one and one-half million dollars. In that case our accounts will show a deficit of half a million dollars. In the other case our accounts showed a profit of half a million dollars. We are doing precisely the same amount of business on precisely the same rates, and labor and materials cost precisely the same. We are operating under the same rules of accounts and yet in one case we have a deficit of half a million dollars and in the other case a profit of half a million dollars. It is owing to your policy of renewals, I say, as to what is adequate depreciation allowance.

If we renew and repair sufficiently to take care of the depreciation we should not charge anything to depreciation, and I can produce a score of men that will substantiate that statement, and railroad men at that. On the other hand, if we do not take care of it out of repairs and renewals, then we should take care of it out of depreciation.

There is a note in the accounting about accrued depreciation which must be deducted, and you should deduct a certain amount each year.

Some roads did not commence that until 1913. The New York Central, I believe, did not. None of the roads, to any extent, did it prior to 1908.

In 1910, in the Advance Rate case, the Burlington Railroad officials, I think, subtracted over \$8,000,000 from their allowances of depreciation in order to make the figure comparable. Therefore, I say that an allowance of one-half of 1 per cent may be more than adequate. It is owing to what I am doing in my shops and in my renewals, and that presents one of the most important provisions in this bill, the necessity to take care of that maintenance account.

These railroads, it is rumored, are going to try to rebuild their properties out of the maintenance account during the war, out of the Public Treasury. The English authorities were faced with the same possibility, and the railroads demanded an increase in their maintenance accounts because of the additional wear and tear and the cost of materials, etc. In addition to the guaranty they wanted a higher allowance for maintenance. The Government at first opposed it, because they were afraid of just exactly what I have stated to you. Finally they compromised by saying that there should be an allowance of an additional $12\frac{1}{2}$ per cent, I believe. There is one authority that states that at $12\frac{1}{2}$ per cent, Mr. Dixon and Mr. Parmlee. I have had the legislative reference department make an analysis of the situation here—Senator Kenyon did, at my suggestion—and this analysis fails to state the percentage, but says that there is one practically agreed upon. You can see the possibilities there, Senator Pomerene, if I have made myself clear.

Senator POMERENE. I understand your position with reference to it, and it demonstrates pretty conclusively that when it comes to an argument based upon figures by accountants, etc., that we have got to be very careful lest we be misled, and I suspect that that statement might apply to those who take an extreme view either on one side or the other.

Mr. THORNE. Absolutely so.

Senator KELLOGG. Are you through, Senator Pomerene?

Senator POMERENE. Yes.

Senator KELLOGG. Of course, between 1913 and 1917 there was some increase of property to be maintained?

Mr. THORNE. Yes.

Senator KELLOGG. And between 1913 and 1917 there was a very large increase in cost of material and labor?

Mr. THORNE. Yes, sir.

Senator KELLOGG. Do you say that the amount charged to maintenance in these railroad accounts was more than reasonable to take care of those differences?

Mr. THORNE. You have compared the two years.

Senator KELLOGG. No; I have compared all the years from 1913 clear up to 1917.

Mr. THORNE. I thought you were comparing 1913 with 1917.

Senator KELLOGG. No; all of those years. The gradual increase, whatever it was; was it any more than would take up, or make up, rather, those two items?

Mr. THORNE. In 1913, the maintenance allowance was something like \$428,000,000.

Senator KELLOGG. The figures are here, but, generally speaking, I am asking you.

Mr. THORNE. And in 1917 the amount was \$497,000,000, an increase of something like 16 per cent. I would rather not discuss that until I have the totals. I will state in substance this, Senator: That I can not tell, nor do I claim that the maintenance allowances are adequate or inadequate.

Senator KELLOGG. Or excessive?

Mr. THORNE. Or excessive. I only claim this: That the maintenance allowances of recent years has been so much greater than in the earlier years to which many comparisons are made, from 1903 to 1907, inclusive, that it is an unfair comparison until you make a proper allowance for maintenance in those years.

Second, I claim that there is great danger of making excessive allowances under bookkeeping accounting systems, and that it should be carefully guarded.

And, third, I claim that if you put the maintenance on an adequate basis during the year and a given carrier had made inadequate allowances during the whole three-year period, then your standard return should correspondingly be reduced, if you are taking as your criterion their net during that three-year period, because if they had made proper allowances during the three-year period their standard return would be reduced by that amount of inadequate maintenance.

Now, Senator POMERENE, I have not stated that a half of 1 per cent is adequate depreciation. It should be much larger than that if their repairs and renewals did not take care of it. The point that I am making is that the two accounts must be considered in connection with each other, and it is going to be a superhuman task almost for us in a short time to tell what is an adequate maintenance.

You see the proposition that I am trying to make is that if you increase your maintenance now up to an adequate standard where it was inadequate before, the standard return during the three years should correspondingly be decreased if you are taking that condition as the basis of your test.

Senator POMERENE. I can understand the uncertainties of this whole situation. I happen to have in mind now an interurban line out in my own State that, so far as its financial statement was concerned, showed wonderful earnings. The road was afterwards sold out. If you would run over the track, you would find that it should have been scrapped instead of showing large earnings.

Mr. THORNE. In regard to the property account there is a third column of figures used by the railroads in showing the per cent of net operating income to property. The average ratio for the period 1915 to 1917 was 5.53, which is greater than any other, with only one exception, which is the period 1906 to 1908, inclusive, and in regard to that ratio in that period there are two qualifications which must be borne in mind. First, the inadequate maintenance at that time compared to that now being allowed, and, second, the fact that they have included in their property account since 1907 additions and betterments built out of surplus, whereas before 1908, the fiscal year 1908 or before June 30, 1907, they were not required to include additions and betterments built out of surplus. Consequently, the accounts are constructed on a different basis since June 30, 1907, than prior

thereto, which tends again to disqualify that comparison. Although, taking that comparison, it still shows that the ratio in the last three-year period to alleged property surpasses any other like period in their history, saving only the one I have named.

Further, in regard to that 1907 period, the Interstate Commerce Commission, in their decision in 1911, stated that the returns in 1907 were not normal; that even though they never got any increase in income after that they should make a larger property investment, they should have better equipment and better roadbeds; that they had starved their construction, and the incoming rush of business produced an excessive return.

You will find the statement in substance as I have just outlined in the decision of the Interstate Commerce Commission in the Eastern Advance Rate case, quoted in volume 20, I. C. C. Reports.

So that, taking any of these standards, return on capital stock, return on capitalization, and return on property, that shown for the last three years can fairly be described as the most prosperous in their history, on an average.

If there is any other question about those statements, I should be very glad to answer them if it is possible for me to do so before I go to the next subject.

Senator POMERENE. Can you express an opinion as to whether or not the condition of the rolling stock of these railroads during this past three years has been better or worse relatively than it was during a like period within the recent past? I ask that question because it has been claimed that the rolling stock, and particularly the motive power, has not been kept up during the last few years as it was before. What is your judgment about it?

Mr. THORNE. My opinion would be that the amount of new rolling stock has not kept up with the demands of the country, the locomotives especially, and that goes to the subject of the credit of the companies and their ability to secure funds to purchase the new equipment and for the purpose of new construction.

Senator POMERENE. It goes to the question, too, of allowances which should be made.

Mr. THORNE. For what?

Senator POMERENE. To these railroads as compensation.

Mr. THORNE. For maintenance?

Senator POMERENE. No; for general compensation. That is, it must be considered as one element, is what I mean, in determining the compensation.

Mr. THORNE. If they have not spent the money that they should have spent during the last three years for maintenance, then if you take their net income as their accounts apparently show, you are taking an excessive allowance for their net income. The carriers have had the money. In the last year, for instance, the year ending June 30, 1917, the carriers in the eastern district as a whole had a surplus unappropriated of over \$100,000,000. That is shown in volume 2, page 2. Their net income was \$253,000,000, and their appropriation for dividends was \$126,000,000. There are some readjustments to profit and loss amounting to \$17,000,000. That is an addition, however. So that over \$100,000,000 these eastern railroads had last year unappropriated. Now, if they should have appropriated more money for buying engines and cars, why did they not do it? If they

should have maintained their railroads to a better standard, why did they not do it? In the previous year they also had an unappropriated surplus of over \$100,000,000.

Senator POMERENE. I am not passing upon the question whether they should or whether they should not, but it is claimed, for instance, here that the net earnings of a certain railroad were a given amount, and that we ought to allow them a given compensation. Let us, say, without stating what it is. Necessarily, the net earnings will be one element to determine what the compensation should be. But, on the other hand, the net earnings might not be an entirely safe guide, because it may be that they have not kept up their equipment as they should have kept it up.

Mr. THORNE. I think your comment is absolutely accurate, and I think if they have failed to keep it up and have put the money into their treasuries, that you should reduce the standard return by the amount that they failed to keep it up.

Senator POMERENE. If they do not do their duty, that might be a reason for reducing the salaries of the officers, but that might not be a reason for interfering—

Mr. THORNE (interposing). I do not believe I have made the point clear or I do not think you would have made that comment. I mean this: Suppose a carrier has \$100,000,000 net, aside from their maintenance, and they have spent \$50,000,000 in maintenance, whereas they should have spent \$75,000,000 in maintenance. Under this method of computing the standard return provided by the bill, the net shown by that carrier would be \$50,000,000 when they only spent \$50,000,000, but if they had made a proper allowance for maintenance their net would have only been \$25,000,000. In other words, they have starved their road and showed a greater net than they actually had. That is the only point I am making in regard to that proposition.

Senator POMERENE. The only point that I seek to make is that we must, when we are trying to determine, or the body, which ever it is, the Court of Claims, for instance, is trying to determine what is a fair compensation, we can not be controlled alone by the fact of the amount of net earnings.

Mr. THORNE. I think you are absolutely correct. I think that Mr. Anderson's suggested amendment to that, as he described it the other day, is proper and should be made by you. I have not seen the language of his proposed amendment. It contemplated this: That any additional maintenance allowance, in order to enable the allowance to be adequate, should be reduced from the standard return of the three-year period.

Senator ROBINSON. That is, that the maintenance should be computed upon the same basis that the standard return is computed, and if that was inadequate an additional amount should be provided and taken from the standard return.

Mr. THORNE. Yes; because their standard return was thereby larger than it would have been if it had been adequate.

Senator ROBINSON. Now, may I ask you a question? You have been talking about comparison of maintenance over various years and refer to the impossibility of reaching a definite conclusion concerning it. If I understood you correctly, do the railroads keep accounts of the principal items of maintenance as to rails, etc.?

Mr. THORNE. Yes, sir.

Senator ROBINSON. As to those principal items, an accurate comparison could be made, or could it not?

Mr. THORNE. Yes, sir; to a certain extent. You must take into consideration, though, the increased cost of the rails and the increased cost of labor.

Senator ROBINSON. Have you attempted to pursue that subject, Mr. Thorne?

Mr. THORNE. I have not.

The CHAIRMAN. I would like to ask you this question, Mr. Thorne: I see your contention is that where the railroads have not put in enough, have not made sufficient allowance for the maintenance and have let it go into their earnings, they are getting then more than they are entitled to. Now, have you any suggestion to make, in determining what shall be the compensation we give the roads, as to the amount that we should deduct for this maintenance? Have you any suggestions to make as to the method we should pursue to get an accurate or an approximately accurate criterion by which to judge what would be a proper allowance for maintenance?

Mr. THORNE. No. I am very sorry that I have consumed so much time on this discussion that is fraught with so many complications. The only proposition of an amendment to the bill that I suggest in regard to that maintenance is just what you have stated. If they have been inadequate during the three-year period then they have exaggerated their net to that extent and it should be deducted from their net to make the standard return. That does not apply to a poor road that has had inadequate earnings to make a proper return on the investment, because in that case you will have to go to the Court of Claims anyway. I am speaking, however, of the companies making large returns that will attempt to accept the offer of the Government.

Senator ROBINSON. Either go to the Court of Claims or treat with them on an exceptional basis?

Mr. THORNE. Yes, sir.

Senator ROBINSON. Going back to the question I asked you awhile ago the railroads do keep an account of the actual miles of rail used, and ties, and things of that sort, and so that as to principal items of maintenance it can be ascertained definitely, can it not?

Mr. THORNE. You can ascertain how many ties have been put in and the cost, and how many rails have been put in and their cost.

Senator ROBINSON. Yes.

Mr. THORNE. I am very sorry I have consumed so much time on that proposition. The only proposition is just as I have stated, and if I have misled you as to any part of it I am very sorry. If I may go to the subject, shall I, before lunch?

The CHAIRMAN. I wanted to make the suggestion that has been made to me, that as the Senate is not in session to-day, perhaps we might run on for half an hour longer, if it is agreeable to the committee.

Senator GORE. Yes; let us do that.

Mr. THORNE. In regard to the subject of credit of these railroads, it has been frequently stated because the market prices of bonds have declined it is proof that they have not had adequate earnings and that their credit is impaired. You can not reach that conclusion justly until you consider the effect of the general financial situation in connection with it.

Senator GORE. That is another case where you have to consider tendencies.

Mr. THORNE. It is necessary to consider the cost of money. Now, over and above the additional cost of the money, the carrier is entitled to a net income, but the mere fact of an increase of rate on bonds does not prove inadequate or declining credit. For instance, if I have to pay more money than you do it is evident that my credit is poorer than yours. But if I have to pay a higher rate to-day than I did 10 years ago, that is not evidence that my credit is poorer to-day than it was 10 years ago, because it may be that all other industries have to pay more for money. In other words, the credit reflects the relative ability of a person, company, or corporation to get money. In order to test the tendencies of credit, we had an analysis made showing the rate as closely as we could approximate it to the pure money rate. If you could tell exactly what the pure money rate was, then you could tell whether any individual or any company's credit had declined or increased, because if the rate which that party had to pay had increased faster than the pure money rate had, his credit consequently has gone down.

The CHAIRMAN. What do you mean by pure money rate?

Mr. THORNE. The cost of money independent of the hazard. That is speaking roughly. Another gentleman defined it recently as the cost of money taking into consideration the factor of supply and demand but independent of all other considerations.

Senator ROBINSON. Eliminating any question as to the security or credit.

Mr. THORNE. Yes; it is the cost of money without any personal hazard involved in it.

Senator ROBINSON. In other words, it might be stated as the cost of money where the security is unquestionable.

Mr. THORNE. Yes, sir. The closest we have to that is the Government rate. The Government bonds, however, have certain circulation and deposit privileges that may tend to make the rate which they have to pay to get money lower than the pure money rate because they may have value. On the other hand, municipal bonds present a rate that is close to the pure money rate. Take the bonds of the 20 largest cities of the United States, there is some hazard in connection with them, so they are slightly above the pure money rate. We made a compilation through Mr. Norton in the 1915 advance-rate case of the trend of that pure money rate since 1900, assuming that it was close to the mean between those, eliminating the hazard so far as possible. We found that the average rate which had to be paid by the railroads as a whole had increased less than the approximation of the pure money rate I have just described. It has increased less than the rate that the Government has to pay. It has increased less than the rate paid by the municipalities.

We used for the Government rate those bonds of the four greatest Governments of the world, in our judgment—the United States, England, France, and Germany—up to the war, and for the municipal rate we used those of the 20 largest cities in the United States. Those figures are all of record, I believe, having been introduced in the Newlands investigation.

Senator GORE. In this joint investigation?

Mr. THORNE. Yes.

Senator GORE. In connection with whose statement?

Mr. THORNE. Mr. Norton. Our desire this fall was to bring that showing down to date. It has been stated that railway securities have declined more than industrials during the past year. In order to test that proposition we made an analysis. In that connection there was one witness who took the stand in the recent hearings who made the statement generally. We asked this gentleman, who was a very prominent banker, if he could give us any illustrations of industrials that had increased. He said the general tendency had been for industrials to increase and railroads to decline. We challenged him to name any company outside of those directly connected with the manufacture of munitions that had increased. He named United States Industrial Alcohol, and it turns out that the common had increased and the preferred had declined in that stock.

Further, we took all of the quotations quoted in the New York Commercial and Financial Chronicle, a recognized authority, in an issue where they made the comparison in January with October 31. There is a photograph of one of the sheets from the Chronicle. There were 25 sheets of that kind.

Senator GORE. What is the date of the Chronicle?

Mr. THORNE. It is Prices and Sales for October, 1917, and the year to date. I can not state the date. October or the 1st of November. This showed that there were 11 stocks of the industrials that had increased, and most of those were directly connected with the manufacture of munitions, while 180 had declined.

The Wall Street Journal at that time was publishing a list wherein they showed the average price of certain industrials and railroads this year and last year, and for the week ending November 15, 1917. The average price of the 20 representative railroads had declined less than the average price of the 20 representative industrials each day of that week. That list, of course, was prepared by a disinterested party, and we offered it simply as showing the judgment of those people in the selection of those companies. A fairer test, however, than stocks which fluctuate very greatly is the tendency as to bonds. The exhibit to which I have just referred contains an analysis of the market prices of railroad bonds, also Government bonds, municipal and industrial bonds.

Comparison of groups of railroads, municipals, industrials, etc.

Groups.	3-3½.		4-4½.		5-5½.		6 up.	
	Number of bonds.	Per cent decline.	Number of bonds.	Per cent decline.	Number of bonds.	Per cent decline.	Number of bonds.	Per cent decline.
38 systems.....	5	10.9	117	11.8	54	6.9	19	8.9
38 systems, less N. Y., N. H. & H.....		10.0	109	11.0	54	6.9	18	8.1
14 systems.....		11.6	81	9.8	32	5.9	13	8.5
Panama threes.....		17.6						
Municipal bonds of 17 cities.....	25	{ 3.9-4.4 12.8 }	62	{ 3.8-4.3 13.2 }	6	{ 4.1-4.7 14.6 }	2	{ 3.9-4.3 10.3 }
Industrials, excluding munitions.....	1	.3	34	10.1	95	7.7	23	9.1
Total bonds.....	93	.....	403	.....	241	.....	75	.....
Total 812 bonds.....								

¹ Yield.

Our analysis shows that for the 38 systems in the East, to which I have referred, or which it is stated have suffered more than other sections of the country, the 3 and $3\frac{1}{2}$ per cent bonds declined 10.9 per cent. Fourteen systems, handling 72 per cent of the traffic in the district, declined 11.6 per cent.

Senator GORE. What was the decline of 10 per cent?

Mr. THORNE. On the 38 systems as a whole. The Panama threes, Government bonds independent of deposit and circulation privileges, declined 17.6 per cent; municipal bonds 12.8 per cent; industrials, three-tenths of 1 per cent. There was only one industrial bond. That bond declined less than the railroads, Government, or municipals. But the bonds of the 38 systems and of the 14 systems declined less than the Government bonds, the Panama threes, and declined less than the municipal bonds of the 17 largest cities. There were no quotations on the other three cities available.

Senator KELLOGG. Was that all the bonds of the 38 systems?

Mr. THORNE. Yes, sir; between 4 and $4\frac{1}{2}$ per cent; it shows that the bonds of the railroads declined less than the municipals. Of course, we did not have the quotation of the Panamas. They declined less than the municipals but more than the industrials. The decline on the industrials was 10 per cent, approximately. The 5 and $5\frac{1}{2}$ per cent railroad bonds declined less than either the municipals or the industrials, and all above six declined less than either the industrials or the municipals. The table, as a whole, shows that the municipals declined more than the railroads, and two-thirds of the industrials declined more than the railroads. There were 812 bonds covered in the analysis, all of them being taken. It must be remembered in this connection that the industrials are bearing a higher rate. This question of railroads having a better credit than industrials has been practically conceded of record.

Senator POMERENE. Mr. Thorne, if it is not interrupting you, there is very great force in what you say in reference to the decline of these various classes of bonds, but, assuming that all you say is true with respect to the comparative decline in the value of bonds, how does that reflect light upon the comparative declines of railroad and industrial stocks.

Mr. THORNE. I gave that a moment ago, so far as I had it. I gave you an illustration.

Senator POMERENE. I know you gave an illustration of that, but I am trying to apply your reasoning now with respect to bonds to your reasoning with respect to the decline of the value of railroad and industrial stocks.

Senator GORE. The point, Senator, is as to the credit of the roads. That is the point he is illustrating.

Mr. THORNE. There has been the decline of railroad securities, both stocks and bonds, but the decline is less than in industrials as a whole. It is less than the decline in municipals, and it is less than the decline in Government bonds that are independent of deposit and circulation privileges.

The CHAIRMAN. You are showing, Mr. Thorne, or attempting to show, that the rate on these railroad securities expressed in bonds approximates more nearly the pure money rate than these others?

Mr. THORNE. Yes. The fact that railroad credit, as a whole, is better than industrial credit was practically conceded this past year in the record. Mr. Oldham was the leading witness among the experts offered by the railroads last spring, and I have here an extract from his testimony. This illustrates general conclusions derived from statistical analyses made by people on the other side as well as ourselves. There is no substantial dispute between us on that conclusion.

Here is the testimony of Mr. Oldham:

In normal times I should say the credit of all of those railroads is such that they could borrow considerable amounts of money.

Mr. THORNE. At rates as low as or lower than other industrials generally?

Mr. OLDHAM. Why, certainly. Railroads borrow money better than industrial concerns. That is perfectly true. I do not think that admits of any argument.

Mr. THORNE. That is all.

Again, Mr. Robert F. Maddox introduced a statement showing the yield of the securities of 20 representative railroads and 10 industrials. On cross examination he admitted that the list of railroads was representative, including both strong and weak roads. He further admitted that he had left out all weak industrials and that those he used were the stronger companies, the majority of them being aided by the war by reason of their manufacture of munitions and war supplies. He further testified that these yields fairly represented the credit of the companies, but finally stated that his own exhibit proved the credit of the railroads for every year during the past 15 years down to the present time has been better than that of the industrials.

That can be found in a transcript of the record, page 5478. The quotation from Mr. Oldham's testimony is found in the transcript of the record, page 5541. The record to which I refer is Ex Parte 57.

Senator KELLOGG. I would like to ask you a question there. What tables do you use in your comparison of decline of stocks and bonds?

Mr. THORNE. The two tables are not the same. The decline in bonds is taken from the New York Commercial and Financial Chronicle, which makes the comparison from the 1st or 2d of January with October 31. The table introduced from the Wall Street Journal covers the week ending November 15, 1917, compared with the same period in 1916.

Senator KELLOGG. During the period of the war there has been enormous increase in the price of most industrials in the country, has there not, in stock?

Mr. THORNE. I should say that many of them have; yes, sir.

Senator KELLOGG. Generally throughout the country in manufacturing industrials there was a tremendous increase in the price of their stocks.

Senator GORE. Do you mean since we went into the war or since the war started?

Senator KELLOGG. Since the war started.

Mr. THORNE. I would say "yes" as to those industries connected with the manufacture of munitions and war supplies generally, but I would not say "all."

Senator KELLOGG. But other manufacturers not manufacturing munitions of war, iron and steel of various kinds, not manufacturing munitions of war, have increased enormously.

Mr. THORNE. Yes, iron and steel have.

Senator KELLOGG. Many other manufacturers have increased enormously in their prices?

Mr. THORNE. Yes.

Senator KELLOGG. Some of them five and six hundred per cent, like the Bethlehem Steel Co., of course.

Mr. THORNE. I do not know whether the figures are correct, Senator.

Senator KELLOGG. Bethlehem Steel went up from something like \$35 a share to something like \$600, did it not?

Mr. THORNE. If you desire a statement about munitions——

Senator KELLOGG (interposing). In a general way.

Mr. THORNE. Munitions have gone up very much.

Senator KELLOGG. And other manufacturers have gone up very much.

Mr. THORNE. The stocks have not, as a whole. All but 9 or 11 out of 160 some odd have gone down.

Senator KELLOGG. I am talking about from the beginning of the European war.

Mr. THORNE. Oh, 1914?

Senator KELLOGG. Yes; they have enormously increased during the period of the European war up to January, have they not?

Mr. THORNE. There is no question but what prices have increased very largely.

Senator KELLOGG. They increased a great deal more than railroads increased, did they not, during those years?

Mr. THORNE. You are now speaking of stocks or articles? We were speaking of articles a while ago.

Senator KELLOGG. Well, you have been speaking of stocks, too.

Mr. THORNE. If you are making your statement as to stocks, I can not accept the statement.

Senator KELLOGG. Have not industrial stocks on the market from 1914 up to January 1 last increased much more than railroad stocks on the market?

Mr. THORNE. I think not.

Senator KELLOGG. You think not? Have you compared them to see?

Mr. THORNE. No, sir.

Senator KELLOGG. Then how do you know?

Mr. THORNE. I say, "I think not." I will be very glad to make an analysis of that character if it is desired.

Senator CUMMINS. Assuming that conclusion is correct, what is its application to the question in this bill, or the questions in this bill, so that we may have the application before adjournment?

Senator KELLOGG. Exactly the same application that he makes. He is undertaking to show that railroad stocks and bonds have not declined any more than other stocks and bonds.

Senator CUMMINS. I am not asking about the application of your question. I am asking Mr. Thorne about the application of his conclusion.

Senator KELLOGG. Oh, I thought you were asking me a question. I beg your pardon, Senator.

Senator CUMMINS. Oh, no. We have here the question of compensation and the question of control over rates. What is the application of your conclusion to the matters in this bill?

Mr. THORNE. The showing that I have made, and the admissions of railroad officials on the stand go to show that railroad credit has not declined, that the decline in the market prices of their securities has been surpassed in the decline of the market prices of Government securities, independent of circulation and deposit privileges, and it has been exceeded by the decline of municipal securities. Therefore, the earnings which the carriers have received as reflected in their credit must have been adequate; that the decline of the market prices is due not to railroad credit but is due to war conditions, to the general financial situation throughout the war.

The decline in values during the further progress of the war will be continued. James H. Oliphant & Co., of New York City, has made an elaborate analysis of the decline in values of English securities. I have here a statement showing that.

(The statement referred to is here printed in full, as follows:)

Bank rates during war.

	1914 average, January- July.	1915 average.	1916 average, January- July.	1916 average, July- December.	1917 to date.
	<i>Per cent.</i>	<i>Per cent.</i>	<i>Per cent.</i>	<i>Per cent.</i>	<i>Per cent.</i>
Bank rate.....	3.52	5.00	5.00	5.95	¹ 5.20
Loans to stockbrokers.....	2.13	4.73	5.00	5.87	5.50
Three months' bills.....	2.52	3.70	4.88	5.55	¹ 5.00

¹ Estimated. Bank of England rate was reduced to 5 per cent Apr. 5, 1917, at about the time of the entrance of the United States into the war.

(From War's Effect on British Securities, James H. Oliphant & Co., New York, p. 23.)

War-time dividends of British railways—A selected list of the common, or ordinary, stocks of several of the most important British railways, together with their dividend records, 1913 to 1916, inclusive.

	1913	1914	1915	1916		1913	1914	1915	1916
Caledonian.....	3½	3½	3½	3½	London & South Western..... Great Eastern..... Great Western..... Great Northern..... London & North Western.....	5½	5½	5½	7
Great Eastern.....	2½	2½	2½	2½		4½	4½	4½	4
Great Western.....	6½	6	5½	5½		7	6½	6½	6½
Great Northern.....	8	2½	2½	2½		4	3½	3½	3½
London & North Western.....	7	6	6	5					
					Average per cent..	4.52	4.48	4.40	4.58

(From "War's Effect on British Securities"—James H. Oliphant & Co., New York, p. 25.)

The total par value of all securities listed in London, including American securities, but excluding all excepting the earlier war loans, is approximately \$58,000,000,000. Omitting American securities from the list the following estimated advances and declines have resulted:

	Approximate amount listed.	Aggregate decline estimated.		Aggregate advance estimated.	
		Amount.	Per cent.	Amount.	Per cent.
British funds (Government).....	\$6,000,000,000	\$1,400,000,000	23	.....	.....
Municipal and county bonds.....	1,300,000,000	300,000,000	23	.....	.....
Colonial bonds.....	3,400,000,000	800,000,000	23	.....	.....
Foreign government and municipal..	16,000,000,000	3,500,000,000	22	.....	.....
British railways.....	6,200,000,000	2,000,000,000	32	.....	.....
Colonial railways.....	2,300,000,000	350,000,000	15	.....	.....
Foreign railways (not United States).	3,800,000,000	1,000,000,000	26	.....	.....
Banks.....	1,500,000,000	375,000,000	25	.....	.....
Public utilities.....	2,000,000,000	400,000,000	20	.....	.....
Financial trusts, lands, etc.....	1,200,000,000	200,000,000	17	.....	.....
Commercial, industrial, etc.....	3,000,000,000	600,000,000	20	.....	.....
Insurance.....	350,000,000	10,000,000	3	.....	.....
Iron, coal, and steel.....	600,000,000	.....	.....	\$60,000,000	10
Nitrate.....	40,000,000	.....	.....	2,000,000	5
Oil.....	150,000,000	.....	.....	.....	.....
Shipping.....	280,000,000	.....	.....	*15,000,000	5
Tea, coffee, and rubber.....	120,000,000	.....	.....	60,000,000	50
Mines, including unlisted.....	620,000,000	.....	.....	6,000,000	1
Total.....	48,860,000,000	10,935,000,000	22.38	143,000,000	.29

The approximate net decline, as above, is \$11,292,000,000, equal to approximately 23.1 per cent of the total par value of all securities listed, excluding Americans. At what exact aggregate figure these securities were selling before the war it would be difficult to ascertain. It is, however, safe to say that the average would not be so high as par; British funds, municipals, colonials, home railways, colonial railways, and foreign Governments usually sold at a discount; bank, insurance, and a fair proportion of commercial and industrial securities were at a premium.

American rails listed in London amounted to more than \$8,000,000,000. These were mostly, however, listed on the New York Stock Exchange also. Other Americans listed, but also quoted on the New York Stock Exchange, including United States Steel, would probably amount to nearly \$2,000,000,000. Owing to the fact that a vast percentage of British holdings in American securities were sold in early war days, it is probable that losses have also been realized in this class of securities.

A portion of the \$16,000,000,000 foreign Government and municipals is certainly not held in Great Britain. This estimated aggregate total includes Russian and Latin American bonds, a portion of which are held in France and Holland. It also includes certain French, German, and Hungarian bonds and \$62,000,000 American bonds. It is possible that fully \$4,000,000,000 of these bonds are not held in Great Britain. (From *War's Effect on British Securities*, James H. Oliphant & Co., New York, pp. 22-23.)

On English railroad securities the decline has been something like 32 per cent since Great Britain entered the war. The decline has been greater than that on industrials, although their income has been absolutely guaranteed.

Senator GORE. You say the decline has been greater than on industrials?

Mr. THORNE. Yes, sir.

Senator LA FOLLETTE. You say you have a statement or table showing all that?

Mr. THORNE. Yes, sir.

Senator LA FOLLETTE. And you have put it in in connection with your testimony?

Mr. THORNE. Yes; that shows the decline in values in English securities.

Senator POMERENE. So that I understand you there, when you speak of the declines in the railway securities, did you mean the stocks or the bonds, or both?

Mr. THORNE. I was speaking generally of both. The decline in values of English securities has been, as estimated by this statistical department of James H. Oliphant & Co., over \$10,000,000,000 since the beginning of the war, and just as fast as you increase the rate at which people can get money you will find a decline in values. It is an inevitable consequence that none of us can avoid.

If the Government of the United States has to pay 5 per cent or 6 per cent, or more, as other Governments have after they have been in the war quite a time, you will find a further large decrease in the values of railroad securities as well as in all other classes of securities, generally speaking.

The CHAIRMAN. The hour for recess having now arrived, the committee will stand adjourned until 2 o'clock.

(Thereupon, at 12.30 o'clock p. m., recess was taken until 2 o'clock p. m. of the same day.)

AFTERNOON SESSION.

The committee met, pursuant to the taking of recess, Senator Joseph Robinson presiding.

STATEMENT OF C. A. PROUTY, OF THE INTERSTATE COMMERCE COMMISSION.

Senator ROBINSON. The committee will please come to order. The chairman has been detained for a few minutes and has asked that the committee proceed with its business. Some time ago the committee requested Mr. Prouty to be present at this hour, and Mr. Thorne has consented to suspend his examination for the moment, the understanding being that some of the members of the committee wanted to ask Mr. Prouty some questions.

Mr. Prouty, some testimony has been introduced during the course of the hearings, relating, of course, to the just basis of compensation for the railroads that have been taken over by the Government during war times, and it has been suggested by some that a proper basis would be the value, the actual value of the property, as ascertained by the Interstate Commerce Commission. It is understood and generally known that you have been in charge of that division of the Interstate Commerce Commission which has been intrusted with the physical valuation of properties.

Can you state generally about how far that work has proceeded in the commission?

Mr. PROUTY. Mr. Chairman, what you want to know is, I suppose, how long it would be before that work would be available for this purpose, and I can state it better that way.

Senator ROBINSON. I wish you would state it.

Mr. PROUTY. We expect to complete our inventories as of about two years from the first of last January. That is, it will take us about two years more on the average to complete it.

Senator TOWNSEND. Of last January, or this January?

Mr. PROUTY. This January. We expect to complete our field work on the average as of about January 1, 1920.

Now, it will take approximately a year longer to produce a report. The law provides that when a tentative report has been prepared by the commission it shall be served on the carriers and on other interested parties, and that the carrier and other interested parties shall be allowed a certain length of time in which to file their objections. The commission is required to hear those objections.

How long it would take to hear and dispose of those objections I do not know, but I should say that in about three years I would be able to prepare and submit to the commission in behalf of the Bureau of Valuation a report in the case of the principal carriers of this country, practically all of them.

Senator ROBINSON. Have the valuations of any of the carriers been completely determined?

Mr. PROUTY. Tentative reports have been prepared and served in the cases of four or five carriers. Those carriers and the public have filed their objections, and those objections are now pending before the Interstate Commerce Commission. They have been pending there for the last nearly a year and a half. They have not been disposed of. They were finally argued and submitted to the commission something like three weeks or a month ago, and I assume that they will be, in the very near future, disposed of by the commission.

As soon as that is done we shall go to work and complete the other reports. We do not do it now because the manner in which the reports are made up depends to a certain extent upon this decision, and if it turned out they were made up wrong we should be obliged to go to work and rewrite them, involving a great amount of labor. So that it seems better to wait for the decision of the commission, when we know exactly what is wanted and what we have to do, and we can proceed to do it.

Senator ROBINSON. The Senators are free to ask Mr. Prouty any questions they wish.

Senator CUMMINS. I would like to ask one question. From your long experience on the Interstate Commerce Commission and your subsequent work as the head of the Bureau of Valuation, will you please state to the committee whether it can place reliance upon the property investment account as shown by the reports of the railway companies?

Mr. PROUTY. Now, the investment accounts of the railway companies of this country are absolutely unreliable. In some cases it is pretty near the fact and in other cases it is nowhere near the fact. The investment account as a rule balances with the stock and bond issues. That is not an invariable rule, but it is a pretty general rule. The railroads have adjusted their investment accounts so as to take care of their securities.

Take, for example, the investment account of the Kansas City Southern, the cost of reproduction there was perhaps \$50,000,000; their investment account was some \$90,000,000, as I remember it. We may take some other railroad where the investment account would run pretty close to the cost of reproduction, and I expect you will

find cases where the investment account would be less than the cost of reproduction. We have not found any cases of that sort yet.

Senator CUMMINS. That is all I wish to ask.

Senator POMERENE. Do I understand from your answer that the investment accounts of these various railroads indicate substantially the actual investment?

Mr. PROUTY. No; it does not indicate the actual investment at all. It indicates the stock issues or the bond issues.

Now, going back to the Kansas City Southern for an illustration, that road was built by construction companies under contract, if I remember right. The railroad was to issue for construction \$25,000 in bonds and \$25,000 in stock for each mile of road completed, making \$50,000. It probably cost approximately \$14,000 or \$15,000 a mile to build that road. The Kansas City Southern treated in its investment account the issue of that \$50,000 a mile as the payment of so much money, consequently its investment account was based on a value, as an actual investment, of \$50,000 a mile, although in point of fact the construction company paid out \$15,000 or \$20,000 a mile.

Now, generally, in the history of the railroad stocks and bonds, when securities of any sort have been issued on the property, those stocks have been treated as cash and the investment account has been adjusted on that basis.

Senator POMERENE. Would you care to venture an opinion as to what was the probable actual value of these railroad properties?

Mr. PROUTY. Senator, that opinion would be the wildest sort of a guess. I would not object to giving an opinion if there were any basis for it, but there is absolutely no basis for that opinion.

Senator POMERENE. Of course, I have heard your statement that there are several of these railroads on which you have completed your appraisal, but whether you have gone far enough to justify your venturing an opinion in the matter I did not know.

Mr. PROUTY. No, sir.

Senator POMERENE. I suppose, Mr. Prouty, that when a railroad goes into bankruptcy and is reorganized a new property account is made, or does it take up the old one?

Mr. PROUTY. Well, that depends upon the terms of the reorganization, but generally they do begin a new investment account. The property is usually taken over by a new corporation, and that corporation would begin a new investment account.

Senator POMERENE. Are those more reliable where there has been a reorganization?

Mr. PROUTY. That depends on who reorganizes it. Sometimes the capital is increased by the reorganization and sometimes decreased. In the case of the Kansas City Southern there was one reorganization and the capital was increased.

Senator KELLOGG. You do not consider, however, Mr. Prouty, that the Kansas City Southern is a fair illustration of all the railroads?

Mr. PROUTY. No, sir; the Kansas City Southern is a pretty good railroad, though, Senator, and it is typical of railroads that were constructed in about that period and section.

Railroads in this country were constructed at different periods, and they were constructed on different theories. About that time

Mr. Stillwell was operating and everybody operated in that way, and most railroads were constructed in that way.

Senator KELLOGG. A good many, however, have had some of that squeezed out.

Mr. PROUTY. Lots of them. Take the steel road of the E. G. & E. of the Steel Co.

Senator KELLOGG. In Minnesota?

Mr. PROUTY. No; in Chicago; the E. G. & E. There was a road that was capitalized in the same way to begin with, but to-day its investment account does not much exceed the cost of reproduction.

Senator KELLOGG. I suppose that is probably true of the iron roads there in Minnesota?

Mr. PROUTY. I expect it is.

Senator KELLOGG. Their capital is more, and there is a pretty good deal of money in them. I have no other questions.

Senator ROBINSON. We thank you very much. That is all for the present.

STATEMENT OF MR. CLIFFORD THORNE—Continued.

Mr. THORNE. Gentlemen, this morning attention was called to page 16 of Exhibit 1, showing the eastern district revenues and expenses. The heading on that table was correct, and it should remain as it is in the print. We will furnish the members of the committee an additional sheet showing the western district. The sheet that was introduced showed the eastern district less taxes in one case, and in the other case it included taxes with the operating expenses.

This morning Senator Kellogg asked me in regard to the dividend rate, the average dividend rate on railroads as a whole in the United States.

Senator KELLOGG. No; I do not think I asked that.

Mr. THORNE. Then the subject was brought up. Perhaps it was not you.

Senator KELLOGG. No; I did not ask the question.

Mr. THORNE. The average dividend rate in 1916 on all stock yielding dividends was 7.98 per cent.

Senator POMERENE. Does that include preferred as well as common?

Mr. THORNE. It is just capital stock, which includes both. This figure, 7.98, is larger than any year excepting the average in 1911 and 1908. The average rate on all stock in 1916 was 4.71 per cent. This was greater than in any other year since 1888, except 1914, 1911, and 1910.

Senator ROBINSON. Will you not make a distinction and explain the difference between capital stock and all stock, as you refer it it? What do you mean by that?

Mr. THORNE. I make this distinction: One class includes all stock yielding dividends. The commission makes that separation; it gives the rate on all stock outstanding, whether it yields dividends or not, and then it makes a computation showing the average rate on all stock yielding any dividends.

The average rate on all stock, including that yielding dividends, as well as that not yielding dividends, in 1916, which is the last available year, is over twice as great as it was in 1888 and considerably over twice what it was in 1890. The stock in those early days did not yield much average dividends, the average being in the neighborhood of 2 per cent.

Of course, at that time it was common knowledge that there was a great deal of what is commonly called "water" in the stock. I presume that you are familiar with the testimony of Henry V. Poor, I believe, to the effect that two-thirds of the capital stock did not represent actual investment. As time has passed the ratio of that character of stock to the total, I think, has declined.

In this connection we submit a table showing the ratio of dividends to capital stock outstanding and the ratio of net operating income to the "book value" of American railways as a whole.

Average rate per cent on all stock and on dividend-yielding stock, all railways in United States.

[Authority: Interstate Commerce Commission's Annual Reports of Statistics of Railways in the United States.]

Years.	Average rate of dividend on all stock.	Average rate of dividend on dividend-yielding stock.	Years.	Average rate of dividend on all stock.	Average rate of dividend on dividend-yielding stock.
1888.....	\$2.08	\$5.33	1903.....	3.20	5.70
1889.....	1.93	5.04	1904.....	3.50	6.09
1890.....	1.97	5.45	1905.....	3.63	5.78
1891.....	2.05	5.07	1906.....	4.01	6.63
1892.....	2.11	5.35	1907.....	4.19	6.23
1893.....	2.16	5.54	1908.....	5.30	8.07
1894.....	1.97	5.40	1909.....	4.18	6.53
1895.....	1.72	5.74	1910.....	5.00	7.50
1896.....	1.68	5.62	1911.....	5.43	8.03
1897.....	1.62	5.43	1912.....	4.64	7.17
1898.....	1.78	5.29	1913.....	4.22	6.37
1899.....	2.01	4.96	1914.....	5.13	7.97
1900.....	2.39	5.23	1915.....	3.80	6.29
1901.....	2.70	5.26	1916.....	4.71	7.98
1902.....	3.08	5.55			

948 GOVERNMENT CONTROL AND OPERATION OF RAILROADS.

Book cost of road and equipment and income from operation, all railways in United States.

(1)	(2)	(3)	(4)	(5)	(6)
Year.	Income from operation.	Book cost of road and equipment.	Average income per mile operated, adjusted to eliminate effect due to duplication on account of trackage.	Average book cost of road and equipment, per mile of road.	Ratio of column 4 to column 5.
					<i>Per cent.</i>
1891.....	\$331,593,407	\$8,738,533,165	\$2,106		
1892.....	356,355,852	8,594,394,830	2,249	\$59,675	3.77
1893.....	356,315,886	8,937,545,760	2,151	55,424	3.88
1894.....	303,822,201	9,073,470,532	1,771	55,323	3.20
1895.....	309,818,614	9,203,490,619	1,798	54,567	3.26
Total.....	1,637,905,960	135,778,901,741	2,006	56,210	3.57
1896.....	337,209,541	9,500,327,733	1,902	54,644	3.43
1897.....	326,427,165	9,709,329,228	1,830	55,596	3.29
1898.....	385,524,121	9,760,581,424	2,150	57,395	3.75
1899.....	410,303,487	9,961,840,805	2,252	56,079	4.02
1900.....	477,284,030	10,263,313,400	2,554	56,567	4.52
Total.....	1,936,748,344	49,195,392,590	2,143	56,052	3.82
1901.....	507,184,395	10,405,095,085	2,670	56,941	4.69
1902.....	555,666,083	10,658,321,376	2,853	56,862	5.02
1903.....	585,458,486	10,973,504,903	2,936	56,616	5.19
1904.....	574,581,484	11,511,537,131	2,704	57,893	4.63
1905.....	628,405,575	11,951,348,949	3,001	58,808	5.10
Total.....	2,851,296,023	55,499,807,444	2,854	57,449	4.97
1906.....	714,102,281	12,420,287,938	3,390	59,624	5.56
1907.....	760,277,389	13,030,344,328	3,470	61,816	5.61
1908.....	645,681,895	13,213,766,540	2,952	61,779	4.78
1909.....	732,642,083	13,609,183,515	3,276	61,391	5.34
1910.....	826,466,756	14,387,816,099	3,644	63,631	5.73
Total.....	3,679,170,404	66,661,398,420	3,337	61,679	5.41
1911.....	768,213,345	15,195,262,635	3,304	67,833	4.87
1912.....	751,266,806	15,874,579,626	3,190	69,049	4.63
1913.....	829,863,248	16,351,639,266	3,584	70,042	5.12
1914.....	704,685,079	16,936,697,840	3,006	71,770	4.19
1915.....	728,212,079	17,247,101,881	2,972	72,689	4.09
Total.....	3,782,240,557	81,605,281,248	3,208	70,321	4.56
1916.....	1,043,839,822	17,525,576,908	4,247	73,209	5.80
1917.....	1,069,750,514		4,851	74,500	6.56

¹ Does not include figures for 1891, as no mileage is stated for that year.

² Returns do not include data for switching and terminal companies.

³ Represent returns for Class I and Class II roads and their nonoperating subsidiaries.

⁴ Represent returns for Class I and Class II roads and their nonoperating subsidiaries. Figures are taken from the 1913 statistical report.

⁵ Returns for operations, columns 2 to 4, are based on figures which exclude returns for so-called small roads and switching and terminal companies.

⁶ Figures in column 2 are from monthly reports of revenues and expenses of Class I roads, excluding switching and terminal companies.

⁷ Based on estimated figures.

⁸ Authority: Thirty-first Annual Report of the Interstate Commerce Commission to Congress, Dec. 1, 1917.

Also, this morning a question was asked me as to the maintenance. In the noon hour Mr. Walker compiled a little table, which I will offer in connection with my statement, showing that the total maintenance of the eastern railroads, 38 systems as a whole, in 1913 was \$60,000,000 greater than ever before, the figures being \$429,000,000 in round numbers. In 1914 it was greater than that—\$440,000,000; in 1915 it was \$403,000,000; in 1916 it was \$452,000,000; in 1917 it was \$498,000,000.

Tendency of total maintenance charges, 38 systems, eastern railroads.

1900	1901	1902	1903	1904	1905
\$85,513,377 95,252,085	\$83,174,841 100,037,599	\$104,699,676 110,656,484	\$114,072,304 122,840,040	\$111,254,666 137,499,984	\$115,928,848 147,527,146
180,765,412	193,212,440	215,356,160	236,912,344	248,754,650	263,455,994
1906	1907	1908	1909	1910	1911
\$127,817,029 164,678,841	\$139,368,682 180,578,392	\$131,493,513 178,399,348	\$122,688,062 173,206,013	\$146,027,051 196,574,213	\$151,605,653 202,726,306
292,495,870	319,947,074	309,892,861	295,891,075	342,601,264	354,331,959
1912	1913	1914	1915	1916	1917
\$152,254,600 210,533,443	\$181,470,439 247,819,697	\$179,568,510 261,130,524	\$159,474,913 243,934,164	\$175,764,304 276,761,522	\$187,962,149 310,665,596
369,088,043	429,290,136	440,699,034	403,409,077	452,525,826	498,627,745

Commissioner ANDERSON. Mr. Chairman, may I ask a question in that connection?

Senator ROBINSON. Yes, sir.

Commissioner ANDERSON. Have you ever gone, Mr. Thorne, into the question whether the increased cost of maintenance that the roads have been charging up has any connection with the increased weight of rolling stock and engines?

Mr. THORNE. I think that unquestionably the increased weight of rolling stock, both engines and cars, has occasioned an increase in maintenance. However, we have that figure reflected as to locomotives in the maintenance per hundred-pound traction power, which would indicate that the maintenance was much larger during the last few years than in early years. However, in that connection you must still take into account the increased cost of materials.

Commissioner ANDERSON. Yes, but what I wanted to get at is not quite apropos to this issue, and I ask it because you have so much information. Have you made a careful study as to whether this increased weight of rolling stock is a real increase in the efficiency of the railroads, or whether it is being consumed, so far as apparent economies are concerned, in increased cost of maintenance, and in tremendously increased cost of overhead, due to the necessity of rebuilding a good share of the railroads to take care of this heavier rolling stock? Have you ever been into that?

Mr. THORNE. To some extent only. It is unquestionably true that the building of larger engines has required a strengthening of the roadbed, the expenditure of very large sums in heavier rails and heavier ballast.

Commissioner ANDERSON. And bridges?

Mr. THORNE. And bridges; and we have been going through what might be fairly described as a reconstruction period since 1910, or in that neighborhood.

In regard to the showing this morning as to maintenance, my conclusion can fairly be stated, I believe, that I do not make any claim

as to whether the maintenance was adequate or inadequate during recent years. My only point is that it is much in excess of former years, and if it has been inadequate, then they have exaggerated their net revenues. If you make it adequate during the war period you should take into consideration that fact.

Summarizing my showing as to the revenues of the carriers, I believe it can not be successfully controverted that the figures I have offered, and those offered by the railroads, demonstrate that the gross revenues, the net revenues, the ratio of net revenues to property, the ratio of net income to capital stock, the ratio of net income to total capital obligations, have all been greater on an average during the past three years than ever before in their history.

In that summary there is only one exception, that is, the ratio to property during the past three years is slightly less than the figures of 1906 to 1908, inclusive, and, as I stated, the decision of the commission in the 1911 Advance Rate Case, written by Mr. Commissioner Prouty, clearly stated that the 1907 situation was not normal, that the roads had not kept up their property adequately, and even though they did not receive any more income the shipping public was entitled to a better property.

In regard to the property investment figures since June 30, 1907, they have more nearly approached the money put into the property than prior thereto. But all of the errors in the property investment figures as of June 30, 1907, are substantially reflected in the figures to-day up to that extent. In other words, they took, generally speaking, the basis of 1907 and added to that figure. So that the comments of the commission as to the situation in 1907 are still true, generally speaking, as of the property to-day, to the extent that they were in error at that time.

The Interstate Commerce Commission in their report to Congress for the year 1908, page 85, made this statement in regard to this alleged cost of property:

"Every balance sheet begins with 'cost of property,' against which is set a figure which purports to stand for the investment. This is no place to enter upon an extended criticism of the practice of American railways in the matter of their property accounts, nor is such a criticism necessary for the purpose in hand. It is sufficient to refer to the well-known fact that no court, or commission, or accountant or financial writer would for a moment consider that the present balance-sheet statement purporting to give the 'cost of property' suggests, even in a remote degree, a reliable measure either of money invested or of present value."

Since that date they have changed their method of compilation of that figure; the effect of the change of policy has been very substantial.

Senator Bristow yesterday referred to one striking illustration of that in connection with the Pennsylvania, stating that it had put \$350,000,000 of earnings into the property since 1907. Prior to that they did not do so to any substantial extent whatsoever.

Now, how meaningless is a comparison of a rate to property to-day to a rate to property at that time on the Pennsylvania Railroad! If you had included the property built out of earnings at 1907, you would have had a lower rate of return in 1907. So that, regardless

of your conclusion as to whether these surplus earnings should be in or out of the property, the comparison is fallacious.

In regard to the \$350,000,000 of construction out of earnings, it deserves some slight modification that did not occur to President Rea on the witness stand. If there were notes issued during the latter part of 1917, the proceeds from the sale of which have not been reflected, it would distort it to some extent. That is, in the very last year.

Second, there might have been some income from outside investments that would further modify that figure. If I remember correctly, there are something like \$75,000,000 in round figures that the Pennsylvania system invested in outside securities. Now, somebody else may say to you that there are \$300,000,000. You will have to be careful there and ask which property he is speaking of. The investment in outside securities by the Pennsylvania Railroad is different from that of the Pennsylvania system.

I was referring in my statement to the Pennsylvania system, and using the figures that the railroads themselves put in evidence in that case. No person can contradict it. That investment out of earnings might be still greater, but we are confident, taking into consideration both of the modifying factors that I have just described, the Pennsylvania system has put in out of earnings in the property since 1907 in the neighborhood of \$275,000,000 to \$300,000,000, at least, while they have put into property out of the sale of securities, something like \$150,000,000.

In other words, the American people have built almost twice of the Pennsylvania Railroad system, what the owners themselves of the property have put into the property out of new money.

Senator TOWNSEND. Repeat that again. I did not hear that.

Mr. THORNE. The public, through the rates they have paid have furnished the money with which to build almost twice as much of the property of the Pennsylvania since 1907, as the owners of the property themselves have built out of money which they have put in.

Senator KELLOGG. Since the same date?

Mr. THORNE. Since the same date.

Commissioner ANDERSON. They paid 6, or 7, which, during that time?

Mr. THORNE. Six, regularly.

Commissioner ANDERSON. Did they not pay 7 for a while?

Mr. THORNE. I think not. Maybe they did.

The question now relates to this property account. I made a statement in opening in which I referred to additions and betterments out of surplus earnings, and in which I stated that if the railroads now demand that additions and betterments built out of surplus should be capitalized, they are repudiating the admissions of the leading witness for the western railroads and the leading witness for the eastern railroads in the 1910 advance rate case. They are adopting a principle which the commission unanimously said in 1911 was unjust.

In considering this situation to-day we are not dealing with a rate case, nor are we dealing with a purchase of the properties. These companies still retain the title, and if the Supreme Court allows an increase in land values 2, 3, 5, or 10 years hence, when they get

their properties back they will have that much added, as the land values will have increased.

Again, the properties remaining their own during a perilous time in our history, are being shielded from the hazards of the war. We are entering a period that will be very perilous to industries generally, and after that period has passed the railroads may or may not get their properties back, but their valuation will be determined as of that date, unquestionably. That is different from a purchase at this date. It is, in the meantime, very analogous to operation by the companies subject to the public paying a return. The public is going to continue to pay this return, not in freight rates, perhaps, but out of the Treasury, and that is a guaranteed return. It is not a return which one company would agree to pay another company, but it is a return with all of the wealth and credit of the Government back of it. In other words, it is a Government bond.

What are the purposes of this surplus? What are the statements of the commission as to the purposes of the surplus, and the statements of the railroad officials on the same subject? Every man in business must recognize that in ordinary times a company engaged in any industry should have some surplus for the purpose of tiding them over lean years. Even though you give them an adequate return on their investment, if that is restrained they ought to have a surplus for building nonrevenue producing improvements. The railroad occupies a different relationship to the public than most of the other industries. They are exercising a governmental function.

Up to the coming of the steam engine, the public generally owned the right of way; they owned the public highways. We require of them a performance of certain functions that we do not require of other industries. We say to the railroads, "You have to build better tracks; you have to build overhead crossings, underground crossings; you have to put on safety appliances"—many investments we require of them that do not produce revenue. In return for that the railroads say you ought to build those and not compel us to. We are entitled to a reasonable return upon the money that we put in, and these nonrevenue producing improvements, if we are compelled to put them in, you ought to build them. The Government, through the Interstate Commerce Commission, has sanctioned that policy.

But the question then came up, if the public allows rates adequate to build these nonrevenue-producing improvements, create a surplus for tiding over lean years, ought we in addition to paying you a reasonable return on the money you put in, also to pay a return on the money we put in? And the railroad presidents have frankly stated. "No; we do not expect to capitalize that."

Now, it would be of little value for me to continue that argument. I think it would be best for me to simply read to you gentlemen the statements of the commission and the statements of these railroad officials in support of the claims that I have made.

First, as to the commission's statement in the *Western Advance Rate case*, 1910 (20 I. C. C., p. 307), at page 340. It perhaps might deserve a little bit more introduction. The opinion is written by Mr. Commissioner Lane. It is a unanimous opinion, rendered by the Interstate Commerce Commission. He is now speaking of the claim of the railroads that if they put back into the property money derived

from earnings they should be able to increase their rates to take care of that.

"It is idle to spend time in nice processes of reasoning over such a condition of facts," said Commissioner Lane. "Public policy, the welfare of the State, forbids the adoption of any such working theory."

Again, in the same opinion, he said, at page 342:

This investment must take care of itself. It must bring a return for itself either in increased traffic or in reduction of expenses of operation. There is no justification for the investment of this surplus if it is to have the effect of increasing the rates upon the shippers over the original line.

There are just one or two more expressions. Here is that of the Public Service Commission of New York in the case entitled *Re Rates of Queensborough Gas & Electric Co.* (2 P. B. S. C., first district, New York, p. 544) at page 575:

It is not reasonable to require consumers to pay higher rates than they otherwise would be required to pay in order that these higher rates may provide funds from which to construct additional plant, which becomes the property of the company. Such plant and property is ordinarily paid for out of capital but whether this course is followed or the stockholders voluntarily relinquish a share of their dividends in order to increase the value of their property has no relation to this case. Suffice it to say that the consumers should not be required to pay higher rates and thereby make a donation to the company or to its stockholders. The company has not suggested that, if such contributions be made, stock, bonds, notes, or other liabilities will be issued to those who provide the funds.

I will give you now the testimony of Mr. Ripley. Mr. Ripley, the president of the Santa Fe Railroad, testified as follows:

Senator WATSON. When and where?

Mr. THORNE. In the 1910 advance-rate case before the Interstate Commerce Commission. The extract that I shall read will be found in the Senate document in which that was printed, Document No. 725, volume 4, Sixty-first Congress, third session, at or about page 2358.

Mr. NORTON. What is your idea as to what improvements should be made out of the earnings, and what out of capitalization? That is to say, should the rates in this case be increased so that improvements may be made directly from the earnings?

Now, that is the way the question arises, and the subsequent testimony will indicate what he intended to do with the property so built and whether he intended that it should be capitalized later.

Mr. RIPLEY. Well, in part. There are certain classes of expenditures that should be made from earnings always rather than from the sale of either stocks or bonds.

Mr. NORTON. For example?

Mr. RIPLEY. Well, for example, a very large class of expenditures that return no interest upon which there is no possible—no probability and no possibility of any direct return either in saving of expenditures or increasing the earnings. In that class are the various restrictions and improvements demanded by municipalities. Where we are obliged, for instance, to elevate our tracks in the cities. That is something that the return from which financially, from a railroad standpoint, amounts to nothing. It is of safety to the public—convenience to the public—and in a certain way it is a convenience to the railroad, but the interest on the cost of an improvement of that kind is ten to twenty or thirty times any benefit that accrues from it to the railroads themselves.

The building of fine stations, while it gratifies the local pride of a community, while every little town along the line wants a station which shall be the pride of the place, and in most cases the very best building in the city—does not sleep nights, so to speak, until it gets something of that kind, particularly if another

town has it—all those things cost the railroad a great deal of money, yet pay the railroad absolutely nothing in return.

The same is true with the paving of streets. The communities all along our line—and they improve as they grow up from country villages to would-be metropolises—demand all manner of improvements in the way of gates, in the way of paving of crossings, in addition to stations, and all that sort of thing; and they ask for it properly; it is a proper municipal regulation, but there is no return to a railroad company, and all these things, in my judgment, ought to be met very largely out of earnings.

The question of the proper distribution between capital and earnings is one that can be argued on both sides, and argued almost indefinitely, but it is my belief that the present generation should join in the expense of those matters; that the railroads should be allowed to pay for them out of earnings, in order that the entire burden may not be settled on posterity.

When a municipality builds a waterworks or issues bonds for the improvement of its streets, it begins at once to apply a certain amount of the taxes to the extinction of those bonds. The railroad companies should be permitted to do the same thing. A portion of the income derived by these municipalities from taxes is immediately set aside as a sinking fund to extinguish that debt.

Unless the railroad company is permitted to earn sufficient margin over and above its dividend requirements, assuming always that its dividend requirements are reasonable—unless the railroad company is permitted to earn a substantial margin over and above that, it not only loses its credit but it is unable to meet the class of expenditures that I have been discussing without the sale of additional bonds, the placing of additional mortgages on its property, and the consequent transferring of a certain burden which ought to be borne by the present generation on to posterity. That is what has been done in England. The policy of paying everything out in dividends, putting nothing back into the property out of earnings, has been pursued to an extent there that has rendered the capitalization of those railroads so large that it is almost impossible for them to earn anything on it. (S. Doc. No. 47, pp. 23, 24, Western Advanced Rate Case, 1910.)

Mr. LYON. But, take the condition of a road, we are assuming, as the case where you have a dividend of \$10,000,000 and you collect from the public an additional \$10,000,000 and that pays for all necessary improvements demanded by that particular line of railway.

Mr. RIPLEY. Well, it might.

Mr. LYON. I said assume that it would.

Mr. RIPLEY. Yes.

Mr. LYON. Then in the future in determining the rate you would not consider the value of that property acquired through the \$10,000,000 taken from the public previously for that purpose?

Mr. RIPLEY. No.

Mr. LYON. And then your rates would be based upon the original investment?

Mr. RIPLEY. My rate would not be based on any investment whatever.

Mr. LYON. I understand; but I mean from those who possibly have a different view and following the usual method of determining what should be the return upon property or an investment, they do take into consideration, and to that class of people you would not have them consider this money taken from the public and invested for public purposes?

Mr. RIPLEY. No; the public would get the benefit of it and get much the best end of it.

Mr. LYON. It is their money, and they have invested it, and you would not expect any return upon it?

Mr. RIPLEY. No.

In the Eastern Advanced Rate case of 1910, Mr. Willard, president of the Baltimore & Ohio, also chairman of the committee representing the eastern railroads, testified as follows:

Mr. WILLARD. In that connection I would like to say that since the reorganization of the Baltimore & Ohio Railroad the company has earned and applicable for dividends, above its fixed charges, \$125,000,000. Of that amount \$26,400,000 has been paid in 4 per cent dividends on its preferred stock, and that is all that character of security is entitled to. The remaining \$98,600,000 has been disposed of as follows: \$64,400,000, or 65 per cent, has gone to dividends on common stock, ranging from 2 per cent at the lowest through 4, 4½, 5 per cent, up to 6.

and nothing higher than 6 per cent. The balance of the sum, \$34,000,000 out of the surplus, has gone into the property, and to that extent our property is that much more valuable to-day. The capital assets of the company to-day exceed the capital liabilities of that amount, \$35,000,000.

Commissioner LANE. None of the surplus which you have put into the property has been capitalized?

Mr. WILLARD. No, sir.

Commissioner LANE. What about those notes you have out against the property?

Mr. WILLARD. That money, of course, represents new capital, and the money will be spent in the purchase of new equipment and distinct additions to the property that, under the classification, we think should be charged properly to capital account. The items that have been paid for out of the surplus and which, in my opinion, should be so paid for would be such things as track elevation, which does not add to the earning power, substitution of heavier and better bridges for poorer and older ones, stone ballast for and good coaches for poorer ones, and things of that kind, things that do not in themselves add to the earning of the company.

Commissioner LANE. None of your surplus should be capitalized, as I understand you to say?

Mr. WILLARD. None of the surplus that has been spent so far on the Baltimore & Ohio has been capitalized, and in my opinion it should not be; and when the surplus that I speak of—the 50 cents for each dollar that I speak of which should be put into the property in each year—is spent, it should not in my opinion be capitalized. My thought is that at least that much money should be spent on the property each year to afford a proper basis of support for the existing securities.

Senator CUMMINS. May I ask a question there? He says it has not been capitalized. I assume he means by that neither capital stock nor bonds have been issued for it. Is that not your understanding of that expression?

Mr. THORNE. Capitalization has a much broader meaning, Senator, than that. I wanted to read Mr. Trumbull's definition of capitalization.

Senator CUMMINS. Aside from Mr. Trumbull, these amounts have been put in the property investment account, have they not?

Mr. THORNE. Yes, sir; since 1907.

Senator CUMMINS. And to that extent they have been capitalized?

Mr. THORNE. Yes; but, Senator, I think that Mr. Ripley and Mr. Willard were both speaking in a broader way of what capitalization meant. You see, at that time they were putting in additions and betterments out of surplus into property, and they knew it; they did not intend to leave the impression that they were opposed to what they were doing. They meant that they would not demand a return on it. Mr. Ripley, in the extract that I read to you, specifically said he would not demand a return on it. His closing remark was:

Mr. RIPLEY. No; the public would get the benefit of it and get much the best end of it.

Mr. LYON. It is their money, and they have invested it, and you would not expect any return upon it?

Mr. RIPLEY. No.

The meaning of capitalization of any given sum of money is to demand a return on it.

Senator CUMMINS. Precisely.

Mr. THORNE. I am not using the phrase in any but the broadest meaning, and I think those gentlemen, if they did otherwise, would be inconsistent, and would be telling an untruth, because they were at that time putting it into property.

The Supreme Court of the United States, in the Cumberland Telephone case (212 U. S.), had up for consideration the relation of the public to a public utility that had been setting aside money out of earnings for accrued depreciation, and they had been building improvements out of these funds. Commenting upon this, the court said:

It was obligatory upon the complainant to show that no part of the money raised to pay for depreciation was added to capital, upon which a return was to be made to stockholders in the way of dividends for the future. It can not be left to conjecture, but the burden rests with the complainant to show it. It certainly was not proper for the complainant to take the money, or any portion of it, which it received as a result of the rates under which it was operating, and so to use it, or any part of it, to permit the company to add to its capital account, upon which it was paying dividends to shareholders. If that were allowable, it would be collecting money to pay for depreciation of the property and, having collected it, to use it in another way, upon which the complainant would obtain a return and distribute it to its stockholders. That it was right to raise more money to pay for depreciation than was actually disbursed for the particular year there can be no doubt, for a reserve is necessary in any business of this kind, and so it might accumulate, but to raise more than money enough for the purpose and place the balance to the credit of capital upon which to pay dividends can not be proper treatment.

The court below said it was impossible to find out from the books how much of this had been done, and it treated the fact as one to be explained by the commission and not by the complainant. In other words, while this fact was a material one the onus was placed upon the commission, and not the complainant, to show it. We think, on the contrary, that the obligation was upon the complainant. Now, although the books, it is said, do not show how much money collected for depreciation has been, in fact, used to increase the capital of the complainant upon which dividends were paid to stockholders, yet still, even if the books do not show accurately, or even at all, what disposition was made of these moneys, at any rate the officers of the complainant must be able to make up some reasonable approximation of the amount, even if it be impossible to state it with entire accuracy, and this duty rests with the complainant, in order that it may discharge the duty devolving upon it to prove that the rates were not unreasonably high under Order No. 488, or, in other words, that they were unreasonably low under Order No. 552. It may be that the sum, if any, thus used was not enough to affect the claim that the rates under discussion were unreasonably low. The evidence is insufficient to show clearly that which complainant is under obligation to show. (*Knoxville v. Water Co.*, 212 U. S., 1; *Willcox v. Consolidated Gas Co.* of New York, 212 U. S., 19.) We are not considering a case where there are surplus earnings after providing for a depreciation fund, and the surplus is invested in extensions and additions. We can deal with such a case when it arises.

I call your attention to that decision.

Commissioner ANDERSON. Who wrote that opinion?

Mr. THORNE. Mr. Justice Peckham. The reading of that is simply for the purpose to show you that the Supreme Court is still retaining that question unsettled and has reserved it for future consideration. The only decision citing this of any significance is *Garden City v. Garden City Telephone Light & Manufacturing Co.* (236 Fed., 693). This decision takes the opposite position from what I have just stated, in the decision of the commission and in the attitude of those railroad presidents. As to that decision, it is of a Federal court. The Supreme Court has never passed on that so far as I can find subsequent to that other decision.

You gentlemen will remember that the lower Federal courts repeatedly indorsed the apportionment of value on the revenue basis between State and interstate traffic until it was the consensus of opinion generally that that was going to be the doctrine of the courts,

but when that point was finally decided by the Supreme Court of the United States in the Minnesota Rate case, it overruled practically all the Federal court decisions on that point.

I just simply say that that decision of the Federal court is not worthy of confidence as expressing the conclusions of the Supreme Court. The issue is still held in abeyance.

The property investment account of these carriers is entitled to very little weight as indicating value. I call your attention to the fact, for instance, of the Erie Railroad Co. having a larger property account than it has total capitalization. The Erie Railroad system, which includes the parent companies and subsidiaries, in 1917 had a total capital obligation outstanding of \$464,000,000, in round numbers, and a property-investment account of \$475,000,000 in round numbers.

Now, you gentlemen are familiar with the history of the capitalization of the Erie Railroad Co., and certainly no one will claim that that capitalization represents anything approaching its value, and yet here you have a property-investment account exceeding the capitalization. In this set of 38 sheets, representing the 38 systems in the eastern district, 25 railroad systems out of 38 show a larger property investment figure than the total capitalization figure.

Commissioner ANDERSON. Mr. Chairman, if Mr. Thorne has finished on that I shall ask an opportunity to put two or three questions.

Senator ROBINSON. Very well, sir. Are you finished on that, Mr. Thorne?

Mr. THORNE. I wanted to describe the situation in England. But proceed.

Commissioner ANDERSON. I wanted to get your view, Mr. Thorne, as to whether in this measure of war finance, applicable to this unusual situation, you thought that that question is adequately guarded in the language which I want to bring to your attention. If I may say, as I said to Senator Cummins the other day, I regard it as a matter of vital importance in a permanent and sound public policy, and would not commit myself so far as my commission has anything to do with it, in any suggestion I may make, to the proposition of capitalizing the surplus. Suppose we were to add to the end of the bill as now printed, which does involve the possible use of surplus earnings, language to this effect:

That this act is expressly declared to be emergency legislation enacted to meet conditions growing out of war, and nothing herein is to be construed as expressing or prejudicing the future policy of the Federal Government, concerning the ownership, control, or regulation of carriers, or the method or basis of the capitalization thereof.

Suppose you added that language; suppose we also consider in connection with that what I suppose would not be questioned, that during the period of war control it is not reasonably to be expected that there will be any considerable investment of money in luxuries or ornamental additions of the same kind that are referred to particularly in President Ripley's testimony; and suppose also that in order to keep all the money derived from the standard return as liquid and as used as possible, you do permit any surplus derived from that standard return to be used for additions and improvements, do you think such a bill would prejudice the ultimate sound decision of that important question by the American people?

Mr. THORNE. I should think, leaving other passages in the bill as you have, it would very seriously embarrass you or any other man at any later date in attempting before the Supreme Court or other governmental tribunal to claim that these additions or betterments out of surplus should not be capitalized, because you have there recognized in two sections the policy, and while that last clause would make it not controlling, yet the significance of the passages would still be very strong. And you have specifically stated that you are going to allow the return to the carrier on the value of all improvements built out of surplus at a rate to be determined by the President. You have also in another paragraph guaranteed them their net operating revenues.

The suggestion that I have to make is that if you guarantee the stockholders and bondholders their annual dividends and interest that they have been receiving in the past, including the capitalization, clear up to December 31, 1917, they ought to be content.

Then, if you provide that the additional surplus shall be divided, one-half going to the company for improvements on its property and one-half going to the Government for additions and betterments on other railroad property or as a reserve for protecting its guaranty. I think it is a more equitable distribution of the surplus.

The functions of a surplus—what are they? Mr. Rea has confirmed the statements of the commission. I am going to read to you what Mr. Rea stated, and then I want to ask you if you have not specifically taken care of practically all, if not all, of the functions of a surplus. There is certainly some duplication.

Mr. Rea testified as follows:

Mr. THORNE. Mr. Rea, in your original testimony, several matters were said in somewhat at length. I see no occasion for going through all of these subjects again. You reaffirm what you testified to, at this time, I presume?

Mr. REA. I do.

Mr. THORNE. There are one or two subjects that I want to call out briefly from the record. I think we can save time if the answers you give are substantially in accordance with what I understand to be the record—therefore, I do not want to consume time in discussing them—as to what is the purpose of a surplus. I would like to read to you a passage from a decision, and ask you whether, in your judgment, this fairly expresses it:

"We think that a railroad in ordinary years should be permitted to show a substantial surplus over and above the payment of a reasonable dividend. This is necessary to provide for interest on capital invested in improvements which will not yield an immediate return, to take care of the element of obsolescence, and to tide over years of depression."

Does that fairly express the legitimate object of a surplus?

Mr. REA. I think it does.

Senator POMERENE. From what were you reading?

Mr. THORNE. I was reading from a decision of the Interstate Commerce Commission in the advance rate case of 1910. I am reading now another passage from one of the decisions of the commission wherein it gives Mr. Ripley's testimony, because I want to clarify that in your minds. I am reading to Mr. Rea an extract from the decision of the commission in which it referred to Mr. Ripley's testimony, and Mr. Rea confirmed it later. Here is a quotation from the testimony of Mr. Ripley. I read it to Mr. Rea:

Mr. THORNE. There is one other passage here with reference to the testimony of Mr. Ripley:

"He thought that the stock of the Santa Fe should pay 6 per cent in order to make it reasonably attractive and keep up the credit of the road, and that

another 6 per cent should go into improvements of a nonrevenue-producing character, such as track elevation, passenger stations, and safety appliances, which should not be capitalized. Mr. Ripley's statement was made upon the assumption that the stock of the Santa Fe road represented investment."

Do you agree with that position?

Mr. REA. Substantially.

Mr. THORNE. Just one more question, and I am through with that subject:

"A railroad is justified no doubt in maintaining a surplus which will insure dividends to its stockholders during lean years; and it may accumulate through the years funds to meet obsolescence in plant, unless this charge is taken care of in maintenance. The one other legitimate end for which a surplus may in reason be accumulated is to supply facilities in the nature of luxuries which can not be made to yield adequate return upon the capital invested."

You agree substantially with that?

Mr. REA. Except as to the first proposition. Does that refer to annual surplus or accumulated surplus?

Mr. THORNE. I will read the sentence again:

"A railroad is justified no doubt in maintaining a surplus which will insure dividends to its stockholders during lean years; and it may accumulate through the years funds to meet obsolescence in plant, unless this charge is taken care of in maintenance."

Mr. REA. Yes; that is substantially correct, too.

Here you have the Government requiring certain nonrevenue-producing improvements. You are going to have to build tracks, to maintain tracks to cantonments and other purposes, that may not produce revenue. There is a provision in the bill whereby those matters may be properly adjusted as between the company and the carrier and the Government. You have a requirement in the bill that the Government shall maintain the credit of the railroad. That is, the Government agrees to secure the funds that are necessary or to see that they are secured. That is another purpose of the surplus. Also you have under provisions of the bill the Government agreeing to take care of them during these lean years, giving them adequate money to pay their dividends and interest that they have paid in the past. That is another specific purpose of the surplus which you are taking care of in other portions of the bill.

Now, I say if in addition to that you give them the surplus which was formerly used for that purpose you are squarely duplicating.

Commissioner ANDERSON. I suppose you have in mind, and I am trying to get your view on this bill as a war measure only, the proposition of the bill is to give all roads the average operating income for three years, which is something like a hundred millions less than for the past two years, that to be diminished by war taxes, and that will leave, except only in the case of very prosperous roads, no very large margin; it is true, as to certain very prosperous railroads, it will leave a margin large enough to be cause for very serious consideration.

Now, those roads, if they were to remain in their own private control, could increase dividends and distribute some substantial part of that revenue. They are cut off from that by the provisions of section 5. There can be no increase of dividends except with the assent of the Government. Does not that make as a war measure, where it is absolutely important, I might say essential, to keep all that money in circulation, a different situation, so that the Government may without prejudice to the ultimate sound decision of that very, very important question permit that part of the standard return to be deemed in the nature of deferred dividend or a foregone dividend, to use a

phrase which I have fought very many times? That is a difficult question, and a question which I should like to have it appear on the record as it appeared the other day in my response to Senator Cummins's question, when I was then in the chair you now occupy—a question which has given me the most serious trouble of any, barring perhaps one, in the entire measure which I had the honor to suggest to the committee. I want to be sure that I get your full mind on this as a war measure, and whether or not we are, if this bill should be adopted, in any way prejudicing the public interests on that vitally important question.

Mr. THORNE. In the first place, I will undertake to show you that it will not apply to just a few roads. In the second place, I think by leaving the bill as it stands you are, notwithstanding any reservations in any supplementary clause, rendering a precedent from the legislative department of the Government which will be practically disastrous to the whole subject. In the third place, you are embarrassing the ability of the Government to meet its guaranty, and in the fourth place, you are making a fixed, rigid, inelastic guaranty which the company is bound to receive regardless of the service that it performs.

I believe, if I may be permitted to proceed and illustrate those different facts, a clear construction of our position will be obtained by yourself.

In the first place, as to the number of roads that it will affect. Take the eastern district, where we have system figures. The Bessemer & Lake Erie earned, after paying all its taxes, operating expenses, and interest, 29.23 per cent on its capital stock in 1917, over 35 per cent on its capital stock in 1916. While that company during the war is not able to pay a larger dividend, there is nothing in the act whatsoever that prevents that company at the close of the war distributing that accumulated surplus in the shape of extra dividends.

The Central Railroad of New Jersey in 1917 earned 19.31 per cent on its capital stock, in 1916 over 20 per cent. The Delaware & Hudson in 1917 earned practically 9½ per cent, in 1916 over 12½ per cent. The Delaware, Lackawanna & Western earned over 22 per cent in 1917 and in 1916 over 19½ per cent. The Lehigh Valley earned in 1917 about 11½ and in 1916 12½ per cent. The New York Central system in 1917 earned 15 per cent and in 1916 over 18 per cent. The Norfolk & Western earned over 14½ per cent in 1917 and over 14½ per cent in 1916. The Pennsylvania system earned over 11 per cent in 1917 and over 13 per cent in 1916. The Reading system earned over 13½ per cent in 1917 and over 14½ per cent in 1916. The Chesapeake & Ohio earned 10.96 per cent in 1916 and over 12½ per cent in 1917. The Buffalo, Rochester & Pittsburgh earned over 10½; the Lehigh & New England earned over 13½ and the Hocking Valley over 19½; the Lehigh & Hudson River earned over 28 per cent in 1917.

These roads as a whole handle over 72 per cent of the traffic of the eastern district. In that income you have revenue derived from outside investments, and that has been the chief objection heretofore advanced to any showing of net income to capital stock, that you have included income derived from outside sources. But we have completely met that objection in this case as follows: We have deducted from all of that income all revenues derived from outside sources. Some of the capitalization may have been issued for the

purchase of those outside securities, but we are giving them the benefit of the doubt. For the three-year average they earned over 10 per cent on all of their capital stock, water and all, Erie, Wabash, Pennsylvania, and everything else.

Senator WATSON. You mean the roads the names of which you gave us a moment ago?

Mr. THORNE. Yes, sir; and if you take 1917 alone, they earned over 11 per cent; in 1916 they earned over 13 per cent and in 1915 over 5.8 per cent. Contrast that, gentlemen, with what happened in Great Britain.

Commissioner ANDERSON. Now, to interrupt you there, if I may, with one more question, and then, Mr. Chairman, I think I have completed. Suppose you did not have any stated return, as provided in section 1, which is a mere power to trade, but expected to be acted on, of course; and suppose you remitted all these carriers to the Court of Claims on their constitutional rights; is it probable, in your view as a lawyer, that the Government would come out any better than the standard return?

Mr. THORNE. My answer to that is substantially what I gave before. I think that just compensation depends on what you are getting and what you are paying. We are giving these people as a consideration for the use of their property not only so many dollars annually, but we are guaranteeing them all the credit that is possible. We are guaranteeing them money for the purpose of building all necessary betterments and improvements. We are guaranteeing to them all of their interest and dividends in a most perilous time, the most hazardous time since the Civil War.

I say that that is some consideration worth remembering; and when we also add this other feature, that they can have a larger surplus in spite of the fact that we are taking care of all of the purposes of the surplus, we are going to let them have additional surplus to put into their property, if they earn it, we are very liberal.

Mark the difference, gentlemen, between the United States and England.

Commissioner ANDERSON. Let me ask you just one question there. I do not think you quite answered my last question. No man in the United States is probably more conversant with the court decisions in this field than you; and we are coming now up against the proposition of offering a trading basis which may keep the carriers out of the courts or let them go into the courts. It is not, putting it in other words, a question of what is essentially just if we were making a permanent public policy, taking into account both the past and the future; it is a question of what trade you can make rather than a lawsuit. Is there any probability that the United States would come out better in court than it would come out trading under section 1?

That is the problem that I have been struggling with for six weeks and on which I wanted your opinion very much.

Mr. THORNE. My opinion, Mr. Anderson, is of very little significance on that. It is a prophecy, a guess as to the future. I would say in the light of these admissions of the railroad presidents, if they never expected that to be capitalized in the light of the decisions of the commissions and the courts, that we would most certainly get out better.

If it is your desire to avoid a lawsuit, it would be all right to give the railroads all they want, do away with the Interstate Commerce Commission, deny the shipper the rights to a hearing, and give the railroads all they have made in the three most prosperous years in their history, when many industries of the country will go to the wall, and when everybody is shivering in their boots for fear it will hit them. I say that it is an outrage on the American people to permit such a guaranty as that to go on the statute books.

Frequently references have been made to the situation in England; that England did do that very thing; that England guaranteed the net income of a recent year. Now, let us see whether that be true, and what is the analogy. There are certain distinguished features in Great Britain and in the United States.

Senator POMERENE (interposing). Before you go to that, I would like to ask you a question to get your view. You have indicated that you would prefer to have these cases all go to the courts. The primary purpose for taking over these roads was, of course, to facilitate transportation; a secondary purpose was to stabilize these securities because many of the financial institutions of the country had large amounts of these securities which were held by them at considerably above par, we will say, and in the last five or six months they have very substantially depreciated in value. Now, these securities at the time were earning substantial dividends, as you have indicated, and there is considerable added to surplus. Suppose these roads were compelled to resort to the courts in order to have their compensation determined. In your judgment, what effect would that course have upon these securities now held in these banks and by savings institutions, and what effect would it have upon the financial condition of the country at large?

Mr. THORNE. I would say that if the railroads felt that there was a strong probability of this Congress giving them this fancy return that I have been reading, giving them the equivalent of a Government bond while the war lasts of over 10 per cent on their railroad stock, that they would put up a bitter fight possibly to get it, simply because they thought it a possibility, and that might cause some disturbance on the market for a short time. It would not embarrass any insurance company or any great trust company or banks that were holding their securities, if you make the guaranty that I suggest.

They are holding the securities, I am assuming, for investment purposes. If you guarantee them their interest and dividends, there is no occasion for any decline in their revenues that they receive from those securities.

Take a concrete example: Suppose you held Santa Fe stock earning 6 per cent dividends annually. You can buy it in the market now, say, at 84 or 85. It has probably been not over 107 or around there for a good while. You would be content if you knew that during the next few years of war you were guaranteed by the Government an annual 6 per cent dividend. You would not demand a 14 per cent return on that stock.

Take the Union Pacific. It paid a dividend last year of 10 per cent. You can buy that at about 110, we will say. A 10 per cent Government bond on Union Pacific stock at 150 is good. You are getting there between 6½ and 7 per cent return on a Government bond.

The guaranteeing of the net operating income will have no appreciable effect upon the safety of the bondholders in the properties I have read to you. You will not increase the bond interest rate, and nobody is proposing to do so. Even the bill does not contemplate that. Those bondholders would be guaranteed, and that represents two-thirds of the capitalization of these railroads, and that is the class of securities largely held in your trust companies and security companies and banks; those people, if they had instead of a railroad back of it the Government back of it, assuring them of their annual interest rate, would certainly feel safe and content; and I venture the assertion that stockholders and bondholders as a whole, if you except these people away up at the top that are fighting for every dollar they can get, the bondholders and stockholders as a class will be content with the guaranty of the Government for this interest and dividend return.

Now I would like to show you what was done in England, if I may. England has frequently been cited as a precedent by newspapers and others as justifying a guaranty of net income, and it may have occurred to you that there is some precedent of that nature. There is this distinguishing feature: The surplus in England only approximates one-half of 1 per cent, and that is not only the average on all, but it is the typical surplus, two entirely different things. The average may be the result of wide variations.

I have before me here the list of railroads handling 86 per cent of the traffic in Great Britain. I will read them, a very short list, here: Great Central, rate of return in 1913, 2.77.

Senator KELLOGG. Have you got them all there?

Mr. THORNE. Yes.

Senator KELLOGG. I suggest you put that in, so we can see the whole thing.

Senator LA FOLLETT. I would like to hear them read.

Senator KELLOGG. I have no objection to them being read, but I just suggest that they be put in.

Mr. THORNE. I will be glad to, sir. The Great Eastern, 3.38; Great Northern, 3.86; Great Western, 5.87; Lancashire & Yorkshire, 3.74; London & Northwestern, 5.62.

Senator POINDEXTER. What is that for?

Mr. THORNE. 1913, the year that was taken, though modified by a reduction.

Senator ROBINSON. What is the return on the stock?

Mr. THORNE. That is the ratio of the return. Perhaps it would be better to read the per cent of dividends compared with the rate of return and then you would get that relationship.

Senator ROBINSON. That is what I would like to have.

Mr. THORNE. On the Great Central the rate of dividends—that is, on all capitalization, the way they express it; they have several classes of securities—2.77; rate of return of net income, 2.77. Great Eastern, rate of dividend, 3.34; rate of return, 3.38. Great Northern, rate of dividend, 3.72; rate of return, 3.86.

Now, hereafter, the first I read is the dividend rate, and the other is the ratio of the net income to the total capitalization. They do not have what you call a property investment there in their tables. Great Western, 5.61, 5.87; Lancashire & Yorkshire, 3.69, 3.74; Lon-

don & Northwestern, 5.50, 5.62; London & Southwestern, 3.81, 3.88; London, Brighton & South Coast, 5.12, 5.13; Midland, 2.94, 3.07; North Eastern, 5.69, 6.23; North Staffordshire, 4.18, 4.28; South-eastern & Chatham Railway Companies Managing Committee, London, Chatham, and Dover, 1.72, 1.73; Sontheastern, 3.88, 3.87. Total, 4.08 and 4.23. Caledonian, 2.72, 2.74; Glasgow & Southwestern, 3.02, 2.92; North British, 3.08, 3.19; Great Northern of Ireland, 5.21, 5.25; Great Southern & Western, 4.47, 4.96; total, United Kingdom, 3.91, 4.04. The other total was for England and Wales.

(The statement referred to is here printed in full, as follows:)

Railways in United Kingdom whose gross receipts for year 1913 exceeded £1,000,000.

[Authority: Railway returns of the United Kingdom for the year 1913.]

Name of road.	Gross receipts.	Ordinary stock.	Preference stock.	Guaranteed stock.	Total stock.	Dividends on ordinary stock.	Dividends on preference and guaranteed stock.	Total dividends.	Rate of dividend (per cent).	Net income.	Fixed charges. ¹	Net income less fixed charges.	Rate of return (per cent).
Great Central.....	£5,929,553	£10,638,023	£17,185,428	£3,382,061	£31,225,509	£384,072	£966,076	£966,076	2.77	£2,218,221	£1,352,885	£865,336	2.77
Great Eastern.....	6,015,142	15,362,893	14,731,708	6,094,627	36,189,231	.....	825,228	1,209,300	3.34	2,17,330	960,358	1,222,915	3.38
Great Northern.....	6,742,119	22,654,250	19,759,520	3,435,740	45,649,510	788,858	910,910	1,699,768	3.72	2,463,016	700,189	1,762,827	3.86
Great Western.....	15,431,412	36,965,210	11,995,348	25,655,191	74,186,749	2,284,451	1,874,577	4,159,028	5.61	5,929,034	1,574,657	4,354,377	5.67
Lancashire & Yorkshire.....	6,595,159	18,521,470	29,104,816	2,596,012	50,322,298	846,966	1,019,367	1,866,233	3.69	2,602,111	713,811	1,888,300	3.74
London & North Western.....	16,326,621	42,960,953	27,873,631	15,100,406	85,894,132	3,002,306	1,718,862	4,721,268	3.50	6,334,565	1,512,782	4,821,803	3.62
London & South Western.....	5,414,019	22,186,814	18,700,226	797,980	41,688,020	851,199	738,326	1,589,525	3.81	2,190,562	595,021	1,595,541	3.83
London, Brighton & South Coast.....	3,534,118	10,447,083	10,121,672	1,655,980	22,524,617	548,472	603,876	1,152,348	5.12	1,534,911	378,445	1,156,466	5.13
Midland.....	15,129,136	38,183,397	63,698,974	9,268,580	160,273,831	2,636,195	2,669,831	5,306,026	2.94	6,362,738	1,434,787	4,927,951	3.07
North Eastern.....	11,315,150	32,630,893	16,275,977	6,435,295	56,153,067	2,742,142	1,979,016	3,231,158	5.69	4,454,968	914,899	3,540,069	6.23
North Staffordshire.....	1,085,978	3,394,650	3,317,485	1,170,000	5,062,133	179,732	153,024	337,756	4.18	441,288	95,071	346,217	4.28
South Eastern & Chatham Railway Companies managing committee.....	4,890,589	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
London, Chatham & Dover.....	.....	11,259,282	7,878,832	122,313	19,260,427	401,969	331,107	331,107	1.72	816,193	483,253	332,940	1.73
South Eastern.....	.....	10,049,230	12,286,385	1,784,300	24,119,915	.....	533,940	985,909	3.88	1,416,960	483,537	933,423	3.87
Total England and Wales.....	98,381,981	314,652,994	253,158,820	88,587,345	656,400,159	14,166,341	12,641,490	26,807,831	4.08	38,937,867	11,189,702	27,748,165	4.23
Caledonian.....	5,129,155	35,569,258	14,526,437	9,268,580	59,363,847	1,614,494	968,181	1,614,494	2.72	2,334,041	707,851	1,626,190	2.74
Glasgow & South Western.....	2,012,737	12,654,780	5,491,091	2,260,450	20,465,331	314,052	301,963	616,014	3.02	825,568	220,969	604,599	2.92
North British.....	5,254,607	21,579,157	27,571,987	49,155,144	107,155,144	437,131	1,078,830	1,516,191	3.08	2,427,282	857,525	1,569,757	3.19
Great Northern of Ireland.....	1,191,298	4,049,993	1,749,035	869,270	6,668,264	242,997	104,730	347,727	5.21	457,631	105,788	351,843	5.28
Great Southern & Western.....	1,630,768	5,479,800	1,696,765	2,896,184	10,072,749	296,276	184,198	480,472	4.47	716,018	215,362	500,656	4.96
Total United Kingdom.....	113,600,532	393,986,986	304,198,105	103,881,403	802,066,494	16,073,338	15,279,391	31,352,729	3.91	45,698,407	13,306,397	32,392,010	4.04
Per cent of gross receipts of all railways in United Kingdom.....	86.60	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....

¹ Includes interest on loans, debenture stock, and miscellaneous fixed charges.

² Gross receipts of all railways as follows: England and Wales, £109,908,244; Scotland, £13,642,742; Ireland, £4,623,167; total, £128,174,153.

Senator WATSON. Do you know what the capitalization per mile was of those roads?

Mr. THORNE. I desire to discuss that briefly. The statement has been made that the capitalization in England is something like \$272,000 a mile, while in our country it is somewhere around \$50,000 or \$60,000 a mile. That comparison entirely ignores the fact that there are many more miles of double track, three tracks, and four tracks in Great Britain than in the United States. The capitalization per mile, all tracks, in Great Britain is 134 per cent greater than in the United States.

The comparison also overlooks the fact that the number of train miles in Great Britain averages 237 per cent greater than in the United States.

In other words, the number of train miles per mile of line in Great Britain is over three times the average in the United States.

It also overlooks the fact that grade crossings have been practically eliminated in Great Britain. It also overlooks the fact that the terminals are very much more expensive in Great Britain than here, the great cities being in such close proximity to each other.

Senator WATSON. The rate you gave us was since 1913, you say?

Mr. THORNE. The rate I was giving was for 1913.

Senator WATSON. And the Government then had control?

Mr. THORNE. That was private operation.

Senator WATSON. That is what I wanted to ask.

Mr. THORNE. Under the plan of taking over the roads in England, there have been one or two misstatements made of slight character by the railway officials—

Senator GORE (interposing). Before you pass from this capitalization, would not their plan of capitalizing the surplus, not using surplus for capital purposes, would not that enhance their capitalization and show up in the amount, whereas it would not show up here?

Mr. THORNE. Yes. Nobody suggests or desires that all replacements should be put into capital account. The only suggestion is that where replacements exceed the cost of the article replaced, the excess should go into capital unless it is an expense that the Government has required, and which the railroads legitimately say, differing from other industries, the Government should help build.

The 1913 year used in Great Britain, to which I have just made reference, was not adopted as the standard as it has been stated by parties on the witness stand before you.

First, there was this modification made: The amount by which the seven months of 1914 were less than for the similar period in 1913, should be deducted from the 1913 period. Subsequent to that, that proviso was eliminated, but in lieu of it the railroads deducted from what you are here calling the standard return one-quarter of the bonus going to labor. The net reduction occasioned by the first modification amounted to approximately 2½ per cent of their net income for 1913.

The Statist, which is recognized as one of the authorities, stated that the reduction occasioned by absorbing one-quarter of the bonus going to labor amounted to approximately 2 per cent, so that you reduce from the 1913 figure the amount which I have just described

Now, I have made a comparison of 1913 in Great Britain with former years.

Senator LEWIS. Pardon me, Mr. Chairman, and Mr. Thorne. What do you mean to say by "absorbing." What is the thing that you characterized "absorbing the bonus as to labor?"

Mr. THORNE. I mean they reduced their return guaranteed to them by the amount which they paid in bonuses to labor.

Senator GORE. Do you mean that the Government paid a bonus to labor and that the railroad paid what—20 per cent or 25 per cent?

Mr. THORNE. Twenty-five per cent.

Senator GORE. The railroad paid 25 per cent of it and the Government paid 75 per cent of it. Is that true?

Mr. THORNE. Yes. In 1913 the net income as modified—

Mr. THOM. But it ought to be stated—I do not know whether Mr. Thorne did state that; if so, I did not hear—that in the adjustment of that matter the 2½ per cent was offset against this absorption and the flat basis of 1913 is now the basis of the guaranty.

Mr. THORNE. You are in error, Mr. Thom. I have before me a compilation made by the legislative reference department, Congressional Library. I suggested to Senator Kenyon the wisdom of having an authoritative compilation as to just what happened in Great Britain, and this document that I hold in my hand has been prepared by that department, giving the authorities, making specific references to the official documents.

Senator POINDEXTER. Is there any objection to putting that into the record?

Mr. THORNE. I will be very glad to.

The CHAIRMAN. Without objection, it will be put in.

Mr. THORNE. I found other compilations on the subject, but they contained a great deal of extraneous matter.

Senator ROBINSON. That has already been printed. I call the attention of the committee to the fact that it has already gone into the record.

The CHAIRMAN. Then there is no necessity of printing it again.

Mr. THOM. My authority for my statement will be found in the publication made to this committee by the Carnegie Endowment for International Peace, and the subject is treated on pages 86 and 87 of that document.

Mr. THORNE. That is prepared by Mr. Parmlee, who is director of the Bureau of Railway Economics, which is maintained by American railroads, and is a very able document. I think as a whole it is very valuable.

I now read this statement, which not only makes a digest of it but also gives the official references to authoritative documents in support of it. [Reading:]

On February 13, 1915, as a result of demands for higher wages, based on the increased cost of food, it was agreed between the railway companies, the Government, and the railway men that a special war bonus should be granted to the most important classes of railway men, amounting to 2s. a week for men whose weekly wage was 30s. or more and 3s. for those whose wage was less. The question who was to bear the financial burden of this bonus was for a time in doubt. But in March it was known that the Government and the companies had reached an understanding which involved an amendment of the original agreement for compensation, and the terms of this amendment were announced in the Board of Trade Journal of April 22, among the orders in council and Government notices affecting trade, as follows.

Then follows the announcement, the last paragraph of which makes reference to the bonus, as follows:

It has now been agreed that this reduction shall not in future be made, but that 25 per cent of the war bonus granted to railway employees who come within the railway-cancellation scheme shall be borne by the companies and not by the Government.

That is the first seven months in 1914.

"The method by which the companies' agreement to pay one-fourth of this first war bonus was put into effect under the arrangement between the companies and the Government was by excluding that amount from the working expenses of the railways for the purposes of that arrangement.¹ The remaining three-fourths of the bonus were included in the companies' statements of working expenses. It thus became necessary that gross receipts be correspondingly increased in order that net receipts be kept up to the guaranteed level. The Government made no special grants to the companies for the purpose of paying the bonus.² The obligation, if assumed, to pay the bonus was not a direct obligation either to the men or to the companies, but worked out indirectly as part of the Government's responsibility as guarantor of the companies' net receipts. The withdrawal of the proviso" (that is, the seven months' modification) "simplified the general arrangement between the Government and the companies. Thereafter the sum which the Government guaranteed the companies as net receipts was to be equal to their aggregate net receipts in 1913, subject to a deduction amounting to one-fourth of the first war bonus." [Reading:]

From time to time increases were made in the war bonus; but of these the Government bore the full financial burden. In order that the amount for which the companies were responsible might remain fixed the proportion of the bonus paid by them had to be decreased as the amount of the bonus increased. Thus in October, 1915, when the bonus was doubled, the proportion of it which the companies had to pay was cut in half; that is to say, they were responsible for $12\frac{1}{2}$ per cent of the increased bonus.³ A further doubling of the bonus reduced the proportion to $6\frac{1}{4}$ per cent.⁴ When in April, 1917, the bonus was increased by one-half,⁵ the proportion was correspondingly reduced to $4\frac{1}{2}$ per cent.

In answer to a question put to him in the House of Commons while the amendment to the Government agreement with the companies was under consideration, Mr. Runciman, president of the Board of Trade, declared that "the net effect of the proposed variation in the original agreement which is now under discussion is not to increase the scale of compensation paid by the Government."⁶ That is to say, the deduction of $2\frac{1}{2}$ per cent from the net receipts of the companies in 1913 required by the "proviso" before the amendment was to be approximately equal to the deduction of one-fourth of the first war bonus from the net receipts of the companies in 1913 required by the amendment itself.⁷ It has, however, been estimated by the Statist⁸ that the amendment results in a slight advantage to the companies, since $2\frac{1}{2}$ per cent of the net receipts for 1913 amounts approximately to £1,300,000, while one-fourth of the first war bonus amounts only to about £1,000,000.

I have taken the 1913 figure, with this modification of £1,000,000, securing a total net income of £51,131,000.

¹ Mr. Pretymann, parliamentary secretary to the board of trade, in the House of Commons, Oct. 21, 1915, 74 H. C. Deb., p. 1978.

² Mr. Roberts, parliamentary secretary to the board of trade, in the House of Commons, Feb. 21, 1917, 90 H. C. Deb., p. 1336-1337.

³ Railway News, Feb. 6, 1915, p. 219.

⁴ Mr. Roberts, in the House of Commons, Feb. 21, 1917, 90 H. C. Deb., p. 1339.

⁵ Railway News, Apr. 14, 1917.

⁶ Mar. 4, 1915, 70 H. C. Deb., p. 952.

⁷ Railway News, Feb. 5, 1916, p. 219.

⁸ Apr. 17, 1915, p. 85.

Senator GORE. I did not catch your statement.

Mr. THORNE. I have deducted from the net income for 1913 the £1,000,000 just referred to, which makes a total net income guaranty of £51,131,000. This amount is 7.4 per cent greater than that of 1912; it is 4.99 per cent greater than 1911, which is the next largest net income. In other words, it was only approximately 5 per cent greater than the largest net income preceding that of 1913.

Contrasting that with the net revenues of American railroads in 1916 and 1917, compared to prior years, showing how extraordinarily large the net revenues of those two years are compared to former years, the average for the two years 1917 and 1916 is 21 per cent greater than the next largest year.

Senator POINDEXTER. What is that 21 per cent? Are those percentages you give dividends on the stock?

Mr. THORNE. Oh, no; none of this is that, Senator.

Senator KELLOGG. That is the total amount.

Mr. THORNE. I have stated to you that in England the 1913 net income was approximately 5 per cent greater in dollars than the largest preceding year.

Senator POINDEXTER. You are making comparisons, but what did the dividends amount to in those years?

Mr. THORNE. In England in 1913 it was 3.91 per cent, if my figures are correct. I have here a sheet showing practically the same thing. As I stated a while ago, the net income to total capitalization is within one-quarter to one-half of 1 per cent of the dividends. The ratio of the net income to the total capitalization in England was in 1913 approximately 3.91 per cent; in 1912, 3.55; and in 1870, 4.41.

There is practically a substantial decline from 4.41 in 1870 to 3.91 per cent in 1913 in Great Britain, but that distorts the comparison that I was just trying to make.

The net income in Great Britain in 1913, which was used for determining the standard, modified as I have described, was only approximately 5 per cent greater than the next largest year, that of 1911, while in the United States the two years, 1917 and 1916, which the railroads are seeking to have adopted as the standard of net revenues of American railroads, were 21 per cent greater than any preceding year, the next largest being 1913.

So that the abnormal character of the net receipts in the United States compared to preceding years is very evident.

Senator KELLOGG. In getting at those percentages of preceding years, you took the total income of all railroads?

Mr. THORNE. Certainly.

Senator KELLOGG. But you did not take into consideration the additional capital that has gone into railroads?

Mr. THORNE. No. I can give that figure if you care for it.

Senator KELLOGG. I do not care for it. We have it here in the figures.

Mr. THORNE. The ratio of net income applicable to total capitalization, including interest charges, for the eastern district, where they say they have suffered more because of the congestion, is shown by the railroads themselves in their own exhibit. In 1917, it was 6.18 per cent; in 1916, 6.89 per cent, which is greater than any preceding year by close to seven-tenths of 1 per cent in 1916. In 1917 it was 6.18, which also exceeds any preceding year.

Senator GORE. What is that item?

Mr. THORNE. Net income to total capital obligations corresponding to what I read in England. As compared to the English guaranty the ratio of total net income, plus interest, total capital outstanding for the last three years, 6.52 in the eastern district, compared to the ratio in England of 3.91, in 1913. In other words, you are guaranteeing almost double the rate that was guaranteed in England.

Senator LEWIS. Mr. Commissioner, please let me ask you, with the chairman's permission, whether in these computations, sir, you take into consideration the rules passed by the order in council of England by which munitions and articles which were distinctively for war purposes were not charged for at all, but charged merely to the Government, and as to which there is nothing shown on the books in the nature of a charge by the roads, and no return to the roads?

Mr. THORNE. Senator, I am not a commissioner now.

Senator LEWIS. Were you not commissioner of railroads of Iowa?

Mr. THORNE. I resigned January 1, 1917.

Senator LEWIS. The title always clings, and I was merely extending that to you.

Mr. THORNE. I thank you for the compliment.

Senator LEWIS. The point I have in mind is this: If there was much freight carried for which there was no charge, which would indicate to my mind that had there been a charge for that, under the management of the English railroads, they would have shown still more money.

Mr. THORNE. The figure I was reading was a year before the war, which was used as a standard for the war period. They did not haul the troops or supplies then, as I understand it.

Senator LEWIS. Truly, sir. In using this standard, sir, are you also using it as a basis for the computation of what we are trying to get at for the years 1915, 1916, and 1917?

Mr. THORNE. Exactly.

Senator LEWIS. That is what I thought.

Mr. THORNE. The English Government has adopted a different policy as to how to make up the standard return, and what is suggested by the bill in this respect, as suggested by Senator Lewis. Instead of the Government paying freight rates and passenger fares on the movement of Government troops or Government supplies, they give the carriers their guaranty and make up the difference between that and what they receive from commercial transportation.

In the United States, under the present plan, evidently it is the purpose to continue the payment of rates and fares on Government traffic.

Senator CUMMINS. It makes no difference about the compensation paid the railroads.

Mr. THORNE. Not the slightest. It just simply makes the difference in the way it shall be paid.

Senator CUMMINS. Yes.

Mr. THORNE. The method adopted in Great Britain is worthy of very serious consideration in connection with your whole policy. If the movement of troops and munitions by the Government interferes with other traffic it produces an extra cost. Now, is it fair to say that that extra cost should be borne by the shippers or by the people as a

whole, the shipper paying his proportionate share? In Great Britain they said it was unjust to make the shipper bear that burden. There is much sound logic in support of that proposition. If it were true that the shippers could pass this advance in rates that might be occasioned in order to take care of a possible deficit occasioned by that extra cost, if the shipper could pass that on always to the consumer, there would not be much objection to making the shipper pay it, because the cost would ultimately be paid by the people as a whole. But, gentlemen, in actual practice, as the industry of the country is conducted, that is not the situation. Some shippers can pass it on and some can not do so. You will render a very great hardship, one that will actually be a calamity to certain industries, if you force their freight rates up in order to take care of such costs.

Let me give you an example: Take the oil industry. The independents are practically dependent wholly on rail transportation; not altogether, but practically so. The Standard has a network of pipe lines extending from Bayonne, N. J., down to the Gulf of Mexico, over into Texas, pipe lines on the coast, pipe lines going to St. Louis, Chicago, Whiting, Wood River, into half a dozen different refineries in Ohio and Indiana and New York, and the country is covered by a network of pipe lines.

They do move some by rail, but if there is an advance in freight rates the Standard Oil Co. will only have to absorb a portion of the advance that the independents will have to absorb. The independents will have to absorb it all, and there was testimony of witnesses before the commission to the effect that an increase of one-half a cent per hundred pounds would mean the absorption of all of the normal profit in the handling of petroleum and petroleum products, and at the present time that profit is less than in ordinary seasons, because of the extreme increase in other costs.

Senator GORE. I would like to interject there, Mr. Thorne, if you do not object, that the independent refineries have to pay 50 cents more for crude oil than the Standard, to begin with, which makes the difficulty of competition more serious.

Mr. THORNE. There are some manufacturers and jobbers in other lines of industry that can pass it on to the consumer, but you take the producer of grain or live stock, the price of his commodity at the point of origin is practically the price at the market less the freight rate. You increase the freight rate and you decrease the price he gets for his product. He has to absorb the increase in freight rates. Other manufacturers do absorb the increase, but some do not. Many of the manufacturers do not.

The point I am trying to drive home there is that it is going to be a hardship to force those costs onto certain groups of shippers, instead of making the country as a whole bear the burden.

Senator CUMMINS. Is there not another objection to it? When the producer or manufacturer passes it on, even if he can pass it on, it then becomes a tax on consumption instead of a tax on wealth, very largely?

Mr. THORNE. That is correct. It would be fair for the United States Government to say that during the war there should be no general advances in freight rates. These extraordinary conditions are the result of the war and the activity of the Government, and those

extra costs should be borne by the Government, of which the shippers will bear their fair share.

In making such a suggestion I have only suggested what Great Britain has adopted as the policy for the war. The increase in wage, as I read to you a moment ago, I think, has been in the neighborhood of 50 per cent on those people getting 30 shillings a week, and three-quarters of the increase in wage is borne by the Government. There has been no general advance in freight rates to take care of them. It is a war emergency. There was an advance of approximately 4 per cent in freight rates in 1913 in Great Britain.

Senator GORE. Four per cent?

Mr. THORNE. Yes, sir; a part of which was delayed and put into effect at a later time, but I believe it was ordered in 1913 and went into effect about the time the Interstate Commerce Commission allowed approximately 5 per cent in the eastern district and advances on certain commodities in the West and in the South.

Senator GORE. Even a horizontal increase on rates on all items on all roads in all parts of the country would not obviate the difficulty you spoke of in regard to the oil situation?

Mr. THORNE. Not at all. That would make a few shippers bear it and others not bear it.

Senator GORE. Who made rates in England before the war?

Mr. THORNE. The railway and canal commission of England. I will not attempt to state authoritatively the situation as to the relationship between the companies and the commission. I understand that the companies there, as here, initiated rates. There is a difference about advances. There is a provision there that an advance in cost justifies an advance in the rate. In this country it is that the rates shall be reasonable. In other words, an increase in volume of traffic might offset the increase in cost.

Senator GORE. Who makes the rates now in England?

Mr. THORNE. I understand that the same commission has been making rates, or has been making some changes now and then, up and down, but not many. There has been no horizontal advance in freight rates.

Senator GORE. Have they vested power in a different tribunal or person to fix the rates?

Mr. THORNE. No. The facts in dispute come up between the Government managers of the railroads and the railroad companies. Those disputes, instead of being left to the Government managers, are left to the commission as the appellate body. Instead of reducing the commission to a subordinate position they have made them superior to the managers.

Senator GORE. How is that?

Mr. THORNE. Instead of making the commission subordinate to the managers they have made them superior to the managers, and are there the appellate tribunal.

Senator GORE. The commission?

Mr. THORNE. Yes, sir. That is set out in the document that I am filing.

Senator GORE. They have not vested the King with that power!

Senator LEWIS. If I may be permitted to say, Senator, I attempted to study the question in England and came out with more confusion than I went in, but my understanding is that the procedure is, first

a particular road will insist on having an increase. It will then submit that to the railroad commissioners representing the railroads and the Government, and then they look into the matter and call in whoever is a member of the cabinet and a member of the board of trade and the other officers constituting that body, and then they get together and they have an investigation and recommend a rate upon the basis that you have just mentioned of the increase of costs. Is not that the way it is reached, sir?

MR. THORNE. I understand that is set forth in this document in substance as I have described, if that will be satisfactory.

Senator LEWIS. I just wanted to be sure I was right.

MR. THORNE. The commission is the final appellate body, and there has been a great deal of impatience and trouble between the railway companies and the managers. I would like to read here one statement about that.

"Referring to the arrangement between the railways and the Government, the Engineer stated¹ that 'with such vast business transactions as passed between the two parties financial disputes must continually arise. Every pound is more or less scrutinized by the treasurer. * * * That if they 'only knew the number of negotiations which were already going on between railroad companies and the Government they would realize that the Government would quickly wish every official connected with the railway companies to be interned.'² At least one such controversy reached the acute stage where a resort to arbitration, as provided for in the regulation of forces act of 1871 for cases in which an agreement with the Government could not be reached, was threatened.³ But, so far as has been announced, no actual appeal to the railway and canal commissioners, who would be the official arbitrators in such a case, has yet been made."

The original provision about the arbitration was modified, leaving the commission as I have stated, all of which is set forth in this document.

I have also a document prepared by the Interstate Commerce Commission librarian. It is a monograph of about 29 pages, on what occurred in Great Britain, and is entitled "British railways in the European war," by Le Roy Stafford Boyd. The Interstate Commerce Commission is not responsible for any statements made in this document, as they have had no chance to pass upon it, and they did not produce it, but with that proviso I would like to offer that for your consideration as one of the exhibits.

(The document referred to is as follows:)

[Memorandum to Commissioner Aitchison.]

BRITISH RAILWAYS IN THE EUROPEAN WAR.

I. HOW GOVERNMENT CONTROL WAS ASSUMED.

Government control of railways was assumed in accordance with an act of Parliament, approved August 17, 1871, 34 and 35 Victoria, chapter 86, entitled "An act for the better regulation of the regular and auxiliary forces of the Crown, and for other purposes relating thereto, so far as relates to railways." (Biggs' General Railway Laws, 15th ed., 1830-1898, pp. 580-581.)

¹ Feb. 23, 1917, p. 172.

² Engineer, Sept. 22, 1916, p. 249.

³ Ibid. The particular issue was a sum of £100,000 spent by the North British Co. for wagon repair.

16. When Her Majesty, by order in council, declares that an emergency has arisen in which it is expedient for the public service that Her Majesty's Government should have control over the railroads in the United Kingdom, or any of them, the secretary of state may, by warrant under his hand, empower any person or persons named in such warrant to take possession, in the name or on behalf of Her Majesty, of any railroad in the United Kingdom, and of the plant belonging thereto, or of any part thereof, and may take possession of any plant without taking possession of the railroad itself, and to use the same for Her Majesty's service at such times and in such manner as the secretary of state may direct; and the directors, officers, and servants of any such railroad shall obey the directions of the secretary of state as to the user of such railroad or plant as aforesaid for Her Majesty's service.

Any warrant granted by the said secretary of state in pursuance of this section shall remain in force for one week only, but may be renewed from week to week so long as, in the opinion of the said secretary of state, the emergency continues.

There shall be paid to any person or body of persons whose railroad or plant may be taken possession of in pursuance of this section, out of moneys to be provided by Parliament, such full compensation for any loss or injury they may have sustained by the exercise of the powers of the secretary of state under this section as may be agreed upon between the said secretary of state and the said person or body of persons, or, in case of difference, may be settled by arbitration in manner provided by the lands clauses consolidation act, 1845.

Where any railroad or plant is taken possession of in the name or on behalf of her majesty in pursuance of this section, all contracts and engagements between the person or body of persons whose railroad is so taken possession of and the directors, officers, and servants of such person or body of persons, or between such person or body of persons and any other persons in relation to the working or maintenance of the railroad, or in relation to the supply or working of the plant of such railroad, which would, if such possession had not been taken, have been enforceable by or against the said person or body of persons, shall during the continuance of such possession be enforceable by or against her majesty.

For the purposes of this section "railroad" shall include any tramway, whether worked by animal or mechanical power, or partly in one way and partly in the other, and any stations, works, or accommodation belonging to or required for the working of such railroad or tramway.

"Plant" shall include any engines, rolling stock, horses, or other animal or mechanical power, and all things necessary for the proper working of a railroad or tramway which are not included in the word "railroad."

In pursuance of an order in council, August 4, 1914 (statutory rules and orders, No. 1300, 1914), and section 16 of the act of 1871, quoted entire above, the secretary of state by warrant, dated August 4, 1914, empowered the president of the Board of Trade to take possession of all railroads (excluding tramways) and of the plants belonging thereto, in Great Britain. In pursuance of a further order in council, December 22, 1916 (statutory rules and orders, No. 93, 1917), the secretary of state by warrant, dated December 29, 1916, empowered the president of the Board of Trade to take possession of all railroads in Ireland and of the plants belonging thereto. These warrants, which remained in force for one week only, have in pursuance of the empowering sections been respectively renewed each week by indorsement upon the back of a form especially prepared for the purpose.

Great Britain declared war against Germany on August 4, 1914.

The first movement for taking over the railways was by order in council No. 1300 upon the same date, as follows:

AT THE COURT OF BUCKINGHAM PALACE, THE 4TH DAY OF AUGUST, 1914.

Present: The King's Most Excellent Majesty in council.

Whereas, by virtue of section 16 of the regulation of the forces act, 1871, it is lawful for the secretary of state, when His Majesty, by order in council, declares that an emergency has arisen in which it is expedient for the public service that His Majesty's Government should have control over the railroads in Great Britain, or any of them, by warrant, under his hand, to empower persons to take such action in relation to any railroad in Great Britain as is mentioned in that section:

"Now, therefore, His Majesty, by and with the advice of his privy council, is pleased to declare, and it is hereby declared, for the purposes of the said section 16, that an emergency has arisen in which it is expedient for the public service that His Majesty's Government should have control over the railroads of Great Britain.

ALMERIC FITZROY.

(Gt. Brit.-Manual of Emergency Legislation, 1914, p. 368.)

This was followed immediately by the warrant of the secretary of state (being in this case the secretary of state of home affairs), as follows:

"Whereas, by virtue of section 16 of the regulation of the forces act, 1871, it is lawful for the secretary of state, when His Majesty, by order in council, declares that an emergency has arisen in which it is expedient for the public service that His Majesty's Government should have control over the railroads in the United Kingdom, or any of them, by warrant under his hand to empower any person to take possession in the name or on behalf of His Majesty of any railroad in the United Kingdom, and of the plant belonging thereto, or of any part thereof, and to take possession of any plant without taking possession of the railroad itself, and to use the same for His Majesty's service at such times and in such manner as the secretary of state may direct.

And whereas His Majesty by order in council made the 4th day of August, 1914, has declared, for the purposes of the said section, that an emergency has arisen in which it is expedient for the public service that His Majesty's Government should have control over the railroads of Great Britain.

Now, therefore, in pursuance of the said enactment, I, Herbert Henry Asquith, a secretary of state, hereby empower the president of the Board of Trade to take possession on behalf of His Majesty of all the railroads, excluding tramways, in Great Britain, and of the plant belonging thereto or any part thereof and to use the same at all times during which this warrant or any renewal thereof remains in force, for the conveyance of any of the naval or military forces of His Majesty, or of any goods, stores, merchandise required for the use of His Majesty's fleet, or for the use of any of His Majesty's said forces, or to use the same for any other purpose, or in any other manner for or in which it is expedient to use it for His Majesty's service.

Fourth day of August, 1914.

H. H. ASQUITH.

(Gt. Britain Manual of Emergency Legislation, 1914, p. 369.)"

This warrant of August 4, 1914, running for a week only, as provided in the forces act of 1871, has been renewed weekly by indorsement on a specially prepared blank form (Army Form A 2030A), as follows:

"I, ———, a secretary of state, being of opinion that the emergency continues, hereby renew this warrant for a further period of one week from the ——— day of ———, ——— day of ———, 19—.

(Signed) ———.

(Gt. Britain Manual of Emergency Legislation, 1914, p. 370.)"

By virtue of an order in council, December 22, 1916 (statutory rules and orders, No. 93, 1917), the secretary of state by warrant, dated December 29, 1916, empowered the president of the Board of Trade to take possession of all railroads in Ireland and of the plants belonging thereto. Copies of the order in council and the warrant of the secretary of state as relating to Ireland have not been located, but it is assumed that they are identical in form with those pertaining to taking over the railroads of Great Britain, viz, for England, Scotland, and Wales, which have been given in full.

When war was declared the war office made the following announcement:

WAR OFFICE, August 4, 1914.

"An order in council has been made under section 16 of the regulation of the forces act, 1871, declaring that it is expedient that the Government should have control over the railroads in Great Britain. This control will be exercised through an executive committee composed of general managers of railways which has been formed for some time and has prepared plans with a view to facilitating the working of these provisions of the act. Although the railway facilities for other than naval and military purposes may for a time be somewhat restricted, the effect of the use of the powers under this act will be to coordinate the demands on the railways of the civil community with those necessary to meet the special requirements of the naval and military authorities. More normal conditions will, in due course, be restored, and it is hoped that the

public will recognize the necessity for the special conditions and will, in the general interest, accommodate themselves to the inconveniences involved (The Railway Yearbook, 1915, p. 16, London.)

II. HOW ADMINISTERED.

Since 1859 there have been in England certain volunteer companies of troops in addition to the regular standing army; and among the former have been regiments of Royal Engineers, like the regulars in the Royal Engineers, which have had companies for a railway construction, etc. In 1865 there was established an engineer and railway volunteer staff corps, which made the operation of railways for military purposes a study. They were purely voluntary and unofficial, and not for 30 years was anything done to establish any official connection between the military authorities and the railways. In 1896 there was established a war railway council, composed of high administrative officers of the army and the railways. In the fall of 1911 there were two events that almost caused the Government to take over the railroads—the general railway strike and the Agadir incident in Morocco—which almost involved Germany and France in war, with Great Britain siding with France. These events led in 1912 to the creation of the railway executive committee, superseding the war railway council, composed of the general managers of the leading railway lines, which was to act as a central organization, to give instructions and to coordinate the activities of the different railways in time of war. Working with it in cooperation was the engineer and railway volunteer staff corps, above mentioned. These organizations, year by year, before the present war worked out schemes for war-time operations in conjunction with the director general of military transport. In 1912 all plans had been perfected, and every railway manager had in his safe a confidential sealed document detailing a plan of mobilization. So far as the operation of railways was concerned Great Britain was prepared.

RAILWAY EXECUTIVE COMMITTEE 1914-1917.

On behalf of the Government, under direction of the Board of Trade, the control of the railways in Great Britain (not including Ireland) was vested on and from August 5, 1914, in a committee composed of the following general managers:

Mr. John Burns, president Board of Trade, chairman, succeeded by Rt. Hon. Walter Runciman, president of the Board of Trade, succeeded by Sir Albert Stanley, Metropolitan District of London, chairman.

Sir H. A. Walker, London & South Western Railway, acting chairman.

Mr. J. A. F. Aspinwall, Lancashire & Yorkshire Railway (a prisoner of war in Germany from August 17 to September 21, and during his absence Mr. A. Watson, superintendent of the line, acted in his place. Mr. Watson was subsequently made a permanent member of the committee).

Mr. A. Watson, Lancashire & Yorkshire Railway.

Sir A. K. Butterworth, North Eastern Railway.

Sir Robert Turnbull, London & North Western Railway, succeeded by Mr. Guy Calthrop, London & North Western Railway.

Mr. C. H. Dent, Great Northern Railway.

Mr. F. H. Dent, South Eastern & Chatham Railway.

Sir Sam Fay, Great Central Railway.

Sir Guy Granet, Midland Railway.

Mr. D. A. Matheson, Caledonian Railway.

Mr. F. Potter, Great Western Railway.

Mr. W. Forbes, London, Brighton & South Coast Railway (whose name was added a few days after the first list was announced).

Mr. H. W. Thornton, Great Eastern Railway (an American, former general superintendent of the Long Island Railroad Co., added as a temporary member two days after the first announcement, since made a permanent member).

Mr. Gilbert S. Szlumper, secretary.

(Railway Year Book, 1915, p. 17; 1917, p. 16, London.)

It will be noted that the original committee consisted of 10 members, soon increased to 13, not counting the chairman. The personnel of the committee has remained practically unchanged to date. The official chairman of the railway executive committee is the president of the Board of Trade, but the real presiding officer is understood to be the acting chairman, Sir H. A. Walker, general

manager of the London & South Western Railway Co. Under this committee are groups of committees of railway experts. The war office and the director general of military transport are in touch with the central committee. The main plans of war policy have, of course, to be approved by the Government.

The Government at first did not announce any terms with the companies, leaving this for another time. The lines remained the property of the companies. They retained management, subject to the control of the railway executive committee. Government control did not mean Government ownership. The whole administration of the railways went on as before. The sole purpose at first was the movement of troops; but as the war developed, as economy became more and more essential, the scope of the railway executive committee, now in supreme control, became greatly extended.

Immediately upon the announcement of the personnel of the railway executive committee, there was issued by this committee the following notification, signed by Sir H. A. Walker, acting chairman:

"In view of the announcement made that the Government have taken over the control of the railways, it is desirable that the public should understand exactly what this means.

"The control of the railways has been taken over by the Government for the purpose of insuring that the railways, locomotives, rolling stock, and staff shall be used as one complete unit in the best interests of the State for the movement of troops, stores, and food supplies. The necessity for this action must at once become apparent when it is realized that certain ports, through which the bulk of our food supplies enter this country, may be closed for the purpose of such food supplies, and in that event the rolling stock, locomotives, etc., may have to be diverted to other lines for the purpose of serving other ports.

"The staff on each railway will remain under the same control as heretofore and will receive their instructions through the same channels as in the past.

"We are officially advised that in order to give due effect to the instructions received from the War Office and Admiralty for the movement of troops, etc., it may be necessary to discontinue at short notice a portion of the advertised service or to close certain of the lines against ordinary traffic. Under these circumstances no responsibility can be accepted for any delay or loss that may arise." (Railway Year Book, 1915, p. 16, London.)

IRISH RAILWAY EXECUTIVE COMMITTEE.

As before stated, by virtue of an order in council, December 22, 1916 (statutory rules and orders, No. 93, 1917), the secretary of state by warrant dated December 29, 1916, empowered the president of the board of trade to take possession of all the railroads in Ireland and of the plants belonging thereto. Accordingly, in December, 1916, the following committee was appointed to administer the railways of Ireland on behalf of the Government on terms similar to those applying in England, Scotland, and Wales:

Chairman, Sir William Byrne, under secretary for Ireland.

Acting chairman, Mr. E. A. Neale, general manager Great Southern & Western Railway.

Secretary, Mr. Joseph Ingram, secretary Irish Railway clearing house.

Other members: Mr. J. Bagwell, general manager Great Northern Railway; Mr. M. F. Keogh, general manager Midland Great Western Railway; Mr. J. Cowie, general manager Northern Counties Committee. (Railway Year Book, 1917, p. 17. London.)

III. BASIS OF COMPENSATION TO THE RAILWAYS, AND PROTECTION OF THE STOCK-HOLDERS.

Under the terms by which the railways were taken over for the war, the Government guaranteed to the owners that their net revenue for each year should be the same as for 1913, the year before the war, except when the net receipts for the first half of 1914 were less than the net receipts for the first half of 1913, and in that case the sum payable was to be reduced in the same proportion. On April 14, 1915, this exception or proviso was abolished, in view of the railways' paying 25 per cent of the war bonus given by the Government to railway employees.

The entire Government traffic—passenger and freight—was to be carried by the railways without any direct charge therefor or any accounts rendered.

The one weak side of the agreement was that it made no allowance to cover increased interest payments on account of new investments and new capital expenditure since the war began. This point was afterwards met by an arrangement that the Government should pay interest at 4 per cent on all new capital invested since August 4, 1914, on new lines, branches, terminals, equipment, or other facilities put into use since January 1, 1913.

The original terms of remuneration, as issued by the Board of Trade on September 15, 1914, were as follows:

The regulation of the forces act, 1871, under which His Majesty's Government have taken possession of most of the railways of Great Britain, provides that full compensation shall be paid to the owners for any loss or injury they may have sustained thereby, the amount of such compensation to be settled by agreement, or, if necessary, by arbitration.

His Majesty's Government have agreed with the railway companies concerned that, subject to the undermentioned condition, the compensation to be paid them shall be the sum by which the aggregate net receipts of their railways for the period during which the Government are in possession of them fall short of the aggregate net receipts for the corresponding period of 1913. If, however, the net receipts of the companies for the first half of 1914 were less than the net receipts for the first half of 1913, the sum payable is to be reduced in the same proportion.

This sum, together with the net receipts of the railway companies taken over, is to be distributed amongst those companies in proportion to the net receipts of each company during the period with which comparison is made.

The compensation to be paid under this arrangement will cover all special services, such as those in connection with Military and Naval Transport rendered to the Government by the railway companies concerned, and it will therefore be unnecessary to make any payments in respect of such transport on the railways taken over. (Railway Year Book, 1915, p. 16; 1917, p. 16. London.)

On April 14, 1915, as above stated, the Board of Trade issued its revised terms of remuneration relative to net receipts for the first half of 1914 as compared with the first half of 1913, as follows, the language employed being a commentary upon the order:

On April 14, 1915, the Board of Trade announced that an alteration had been made in the agreement between His Majesty's Government and the railway companies whose undertakings have been taken possession of under the regulation of forces act, 1871.

Under the original agreement the sum to be paid in compensation to the companies concerned was the sum by which the aggregate net receipts of their railways for the period during which the Government were in possession of them fell short of the aggregate net receipts for the corresponding period of 1913. Subject, however, to a proportionate reduction if the net receipts of the companies for the first half of 1914 were less than the net receipts for the first half of 1913.

According to the new arrangement this reduction will not in future be made, but 25 per cent of the war bonus granted to railway employees who come within the Railway Conciliation Scheme is borne by the railway companies, and not by the Government. (Railway Year Book, 1916, p. 21; 1917, p. 16. London.)

In the Railway Age-Gazette of August 11, 1916 (p. 244), Mr. Julius H. Parmelee, statistician of the Bureau of Railway Economics, Washington, D. C., writing of war payments to British railways, says:

"The fiscal year of the British railways closes on March 31. Returns for the first fiscal year under the war agreement, ending March 31, 1915, have recently been made public in a Government white paper. From August 4, 1914, to March 31, 1915, a period of about seven months, the Government advanced the railways £6,851,957, or about \$33,350,000, to offset the reduction of their net revenues. These advances were made monthly to the railway executive committee for distribution among the individual railways. This amount is subject to an adjustment after an audit of the yearly accounts of the railways by a chartered Government accountant.

"It is difficult, on this side of the Atlantic, to analyze the bargain between the British Government and the railways without having more detailed information regarding railway operations in England than has thus far been vouch-

safed. Since the war began the English railway reports have been shorn of practically all details regarding traffic handled, receipts, and expenses, and it is next to hopeless to attempt an analysis of the situation from the American point of view. At first sight, \$33,000,000 does not appear a heavy charge to the Government for the services of the British railways during the early months of the war. This feeling is amply borne out by the comments of various English journals regarding the situation. * * * The market values of standard British railway stocks have greatly fallen off." * * *

IV. EFFECT ON WAGES AND LABOR.

At the outbreak of the war the railways and their employees were engaged in a wage controversy. A scheme of conciliation drafted by a royal commission had come into effect in 1912, to continue until November 6, 1914, but either side could terminate the agreement by a year's notice. The employees gave notice in November, 1913, that they would withdraw, as they wanted the conditions revised. A temporary arrangement was made in October, 1914, by which the agreement was continued, subject to a six weeks' notice by either side. The employees were convinced that since the Government was virtually in control of the lines that their wage demands would be met. The rapid increase in the cost of living made it obvious that something must be done. The railways felt that, even if the Government paid the increased demands, after the war was over that the increased wages would be a burden to the lines.

On February 13, 1915, terms of settlement were arranged. A weekly bonus was to be paid to all employees of 18 years of age and upward engaged in railway operation. All those whose standard rate of wages was under 30 shillings a week were to receive a weekly bonus of 3 shillings, and those earning 30 shillings or more were to be paid 2 shillings per week. The payment of this bonus was to be divided, one-fourth by the railway companies and three-fourths by the Government. A modification of an original agreement by which the Government was to pay all of the bonus was consequently made. This agreement was afterwards revised in 1915, by which all employees of 18 years of age and upward would receive a bonus of 5 shillings per week, and those under 18 years of age would receive 2 shillings 6 pence per week. The understanding was that this wage agreement would not be altered during the war. The National Union of Railway Men and the Associated Society of Locomotive Engineers and Firemen agreed to this formally.

The increased cost of living, however, made further wage increases necessary. In September, 1916, a second bonus of 5 additional shillings was added to the wage increases as above, and in April, 1917, the war bonus was increased to 15 shillings per week for employees over 18 years and 7 shillings 6 pence per week under 18 years.

It is estimated that the total expenditure, additional, on account of the increase will be £23,000,000. The whole of these later increases are to be borne by the Government.

In December, 1915, Mr. Bonar Law, speaking officially in the House of Commons, stated that the Government agreement with the railway companies, notwithstanding the grant of the war bonus, had "involved no financial loss, but probably some gain."

A few months after war was declared 66,000 railway employees out of a total of 643,135 joined the colors. At the end of 1916 this number had increased to 150,000 close to 50 per cent of the employees of military age. The shortage of railway labor became very serious.

The railway executive committee supplemented the army pay of their employees in the military service so that their families at home could maintain themselves. Occupants of railway company houses were not disturbed, and a reduced rate for coal was given them, and the positions of railway employees in the service of their country were guaranteed to them at the end of the war. Army pay of such employees was augmented to four-fifths of their old railway salaries.

The scarcity of male labor compelled the railways to employ women in many positions almost at the beginning of the war. The experiment was a great success. The labor unions asked that the employment of women would not prejudice railway labor after the war as against the employment of men or the reemployment of men who had gone to war. The pay of women in grades in which they were not engaged in August, 1914, was fixed at the minimum pay of the grade. At first women were not granted a war bonus, but in November,

1916, it was arranged that women of 18 years of age and upward should be given a bonus of 3 shillings a week and those under 18 a bonus of 1 shilling 6 pence a week. This amount was later increased to 5 shillings 6 pence for the first class, and 2 shillings 9 pence for the second.

It is believed that any attempt to revert to a prewar wage scale will bring on a war with the labor unions. The railways claim that they can not maintain the present wage scale with the 15 shilling weekly bonus after the war.

As to the women employees, the railways have promised to take their old male employees back into the same positions they occupied before the war. But many of the men will never return. Women have been found efficient and will undoubtedly be retained. But this will doubtless cause some strife. The changed conditions after the war, demanding the employment of thousands of men to restore destroyed towns and cities and the general waste of war to be repaired in various lines, will occasion a greater demand for labor than ever before.

V. EFFECT ON RATES AND SERVICE.

Rates.—A careful examination fails to disclose that freight rates have been advanced in the United Kingdom during the war. There has been more uniformity in rates, and rebating has ceased.

In January, 1917, passenger rates were increased 50 per cent. The rise in passenger rates is said to have been for the purpose of discouraging travel, and not to increase revenues. The Government appealed to the people not to travel except when absolutely necessary. It was urged that travel for pleasure was unpatriotic. Soldiers on leave from the front are given preference in passenger congestion. The increase in passenger fares does not apply to workmen's tickets, season tickets, traders' tickets, or zone tickets, nor to local traffic in towns; nor does the increase apply to tickets issued to relatives desiring to visit wounded soldiers or sailors in hospitals.

Service.—British railways were built for commercial purposes, while the German railways were constructed for war purposes, as shown by uniform gauge, heavy trucks for carrying large guns, lines built entirely for eventual military uses, the German general staff in direct control of the lines, etc. War was declared against Germany on August 4, 1914, yet without any interruption of rail and water traffic the British Army landed in France a few days thereafter and was marching into Belgium before the Germans realized where they had landed or what their numbers were.

Competition among the railways ceased.

Interline settlements ceased. Hundreds of clerks had been employed at the railway clearing house at London, dissecting payments covering the various lines. They were no longer needed.

Canvassing by agents for securing freight shipments ceased.

Publicity departments of the railways, costing thousands of dollars annually, were closed.

Weekly traffic returns of the various railways were no longer compiled or published. Directors' reports were published in small quantities, and only supplied upon request.

Tickets to a common destination on competing lines could be used on any line.

Restaurant and sleeping-car services were cut down or suspended altogether.

Excursion and week-end tickets were ordered suspended when necessary.

Passenger trains were reduced in number.

Train speed was greatly reduced, increasing the number of trains upon the tracks thereby and avoiding long waits upon sidings, every train being kept on the move at a reduced speed.

War stations closed and some branch lines abandoned.

Preshipment of personal baggage was discontinued, and passengers requested to take as little baggage as possible. Later, passenger baggage was limited to 100 pounds, and no excess baggage free as formerly.

Pooling of freight cars on January 2, 1917, a great economy. Formerly empty cars had to be returned to the company to which they belonged, and now they are loaded again and sent in any direction. At first the pool did not include the 600,000 to 700,000 privately owned cars, a distinct feature of British railways.

From January, 1917, the sender or shipper of packages or parcels by passenger train was required to prepay all charges, thus at one sweep wiping out

the cumbrous system of bills and accounts for small-goods traffic on passenger trains corresponding to the American express system. Reformers are insisting that this shall also be done for small traffic by freight trains. It was also decided that claims for loss and damage should be dealt with by the company on which the claim was made, without any division between the lines over which the traffic had moved.

The saving in print paper was so great that one railway company placed on the market tons of paper at a time when it was scarcest.

In the early stages of the war ammunition and supplies were carried to the fighting front by motor cars, but this has in a measure been superseded by tearing up certain lines in England and rebuilding the lines in France.

It is believed that a new era in railway management has begun, and that it will be impossible to revert to prewar conditions. According to some writers it would not be desirable. It is believed that there will be greater unity of administration after the war, and that cooperation has proven better than cutthroat competition. It is believed that the railway executive committee is almost certain to develop into a permanent organization, a supreme court of appeal among the railways. Such a plan, it is believed, will promote efficiency and economy and prevent extravagant and excessive competition. The railway men, however, believe that they will have to face many difficult problems after the war, including the likelihood that many of the present regulatory measures will be retained.

One illustration may be made among the many of the salutary effect of regulation. On July 4, 1917, the controller of coal mines promulgated a scheme for the transportation and distribution of coal. England, Scotland, and Wales were divided into 20 districts or areas, and each had to take its coal supply from certain fixed districts of production. It is estimated that this plan would effect a saving in transportation of not less than 700,000,000 ton-miles annually. The scheme is based on four main issues:

1. The consumption of coal should take place as near the producing point as possible.

2. That in view of the superior facilities offered by the main traffic lines the movement of traffic should follow these routes wherever possible.

3. That the movement of coal should, as far as possible, be in well-defined directions—north to south, north to southeast, north to southwest, and east to west.

4. That an area producing less coal than suffices for its own need should not send any portion of its output to other areas. That an area producing more coal than it requires for consumption within the area itself should only distribute to adjacent or convenient areas.

This scheme did not affect water-borne coal, anthracite, or coke of any description.

VI. STATISTICS.

Since the beginning of the war the British Government, through its board of trade, has issued but one report on railways, being a two-page report for the year 1914. A footnote to this report states that no further reports will be issued. Unofficial figures annually are given in the Railway Yearbook, published in London, which are not given here.

Official figures, 1913 and 1914.

[Great Britain—Railway Returns, 1914. London. 2 p.]

	1913	1914
Mileage, all track.....	55,405	55,668
Authorized capital.....	£1,142,552,000	¹ £1,477,557,000
Paid-up capital.....	£1,334,011,000	£1,341,222,000
Of which was added during year.....	£198,721,000	£199,203,000
Total engine-miles.....	628,324,000	621,239,000
Total receipts.....	£139,451,000	² £139,088,000
Expenditure.....	87,320,000	88,173,000
Net income.....	52,131,000	50,925,000

¹ Including nominal additions to the amount of £29,315,000 which were excluded from the total for 1913.

² Included the estimated amount receivable by the companies, under agreement with the Government, in respect of the control of British railways during the period from Aug. 5 to Dec. 31, 1914.

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 War Payments to British Railways, by Julius H. Parmelee. (In *Railway Age Gazette*, Aug. 11, 1916, vol. 61, p. 244.)
 Great Britain—Railway Returns, 1914. London, 2 p.
 Many other publications have been consulted, which are of little or no value or the material therein is repeated in the publications referred to above.
 NOTE.—The most comprehensive publication upon the subject is one recently prepared by Mr. Julius H. Parmelee, statistician of the Bureau of Railway Economics, under date of December 12, 1917, being a monograph on British railways during the war, upon which he has spent two years. It was gotten up for publication by the Carnegie Institution of Washington, D. C., and will shortly be published. This monograph was not consulted in preparing this paper, which was completed before the monograph was issued.

APPENDIX I.

FUNCTIONS OF THE BRITISH RAILWAY GOVERNMENTAL REGULATING BODIES DURING THE GREAT WAR.

1. The body in England that more nearly corresponds with the Interstate Commerce Commission is the board of trade, railway department. It is an administrative body only, with no judicial functions. The board of trade as a whole corresponds very much with our Department of Commerce. The president of the board of trade, having many departments under him, is a member of the British cabinet, and during the war is chairman of the railway executive committee which is directing the operations of all the railways in the United Kingdom.

So in the present crisis the board of trade, through its president as chairman of the railway executive committee, composed of 13 general managers of British railways, occupies a very conspicuous position in the railway world.

As to the actual war-time work of the board of trade during the war, we can only judge by the great efficiency in moving troops and supplies without disarranging other railway traffic in the United Kingdom. As to any reports of the board of trade during the war outlining in general or in detail anything relating to transportation since the outbreak of the war, there is absolutely nothing, save a 1-page report made for the year 1914, which shows only mileage, capitalization, locomotive ton-mileage, revenue receipts and expenses, with a footnote to the effect that the board would publish nothing more during the war. As the British Board of Trade, especially its railway department, has always been very active it is assumed that its activities have continued.

This much may be said, however, that the railway executive committee, composed of 13 general managers of British railways, is operating the railways efficiently as one system. The president of the board of trade is the only Government official on this committee. He doubtless takes his orders from the military and naval departments, or is influenced by them. According to law and orders he does not have to do so, as he was directed by the secretary of state for the home department, according to the forces act of 1871, section 16, to take over and run the railways. He could have done this without cooperating with the railway executive committee already in existence, or by the creation of a new committee. He could have placed the control entirely within the board of trade without going on the outside for assistance.

It is generally understood, however, that the leading figure in war railway control in England is Sir H. A. Walker, acting chairman of the railway executive committee, who is general manager of the London & South Western Railway.

It is stated that the board of trade has organized a few committees of experts to take over certain duties or to advise with the railway executive committee as to proper methods to pursue. But it is not shown what these duties are nor the names of such committees are not available. Generally speaking, there has been no great change, if any, in the prewar personnel or scheme of interior administration of the railways or the board of trade, nor of the operation of the railways, except as outlined briefly under the head of "Rates and service" at page 18 hereof.

2. As stated, the board of trade is an administrative body, and can be compared with the Interstate Commerce Commission in that respect only. But in England the judicial powers exercised by the Interstate Commerce Commission as to rates are vested in a railway and canal commission, composed of five members holding office for life, at a salary of \$15,000 each. Two members are nominated by the board of trade, one of whom must be a lawyer. The other three are judges of superior courts of England, Scotland, and Ireland, and no member who is a judge sits outside of his own jurisdiction. The court is a traveling court, and thus never has more than three members present, two of whom can render decisions. If it sits in Scotland, the English and Irish judge members are not present, etc.

Its chief jurisdiction is over rate and service questions. A few cases can come on appeal of administrative questions from the board of trade.

The operations of the railway and canal commissioners since the war began can not be determined with accuracy. I can only say that before the war began we received the bound decisions of this court regularly, and they stopped coming at the end of 1914. The bound decisions cover two or three years in each volume. Judging from the statements seen in print that rates have been equalized in England since the war began, and rebating has been stopped, it is quite safe to say that the railway and canal commissioners have not been very active during the war, although this is a mere guess.

One thing is patent, however. The railways of the United Kingdom have legally been turned over to the board of trade, a Government institution. The board of trade could have operated them under that department, but chose rather to call in the assistance of the general managers of the leading British railways. There is undoubtedly great Government pressure brought to bear upon the general managers, known as the railway executive committee, through its chairman, the president of the board of trade, who is a cabinet minister. But the leading feature is that the railways are controlled by a Government department already in existence when the war began, and which by existing law was well fitted for the purpose.

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(Interstate Commerce Commission Library, Dec. 14, 1917. Prepared by Leroy S. Boyd, librarian.)

APPENDIX II.

[Chamber of Commerce of the United States of America, Riggs Building, Washington, D. C. Aug. 3, 1917. War Bulletin No. 10.]

PRIORITY IN ENGLAND.

While Judge Lovett and the War Industries Board are determining what is to be done in this country regarding priority, it may be well to present to business men a statement of what has been done in England toward solving this problem as it exists there.

BRITISH PRIORITY DEPARTMENT.

The priority department is under the Ministry of Munitions of War and has been gradually developed from an informal committee that was constituted in September, 1915, over one year after the war started. Before that time ques-

16. When Her Majesty, by order in council, declares that an emergency has arisen in which it is expedient for the public service that Her Majesty's Government should have control over the railroads in the United Kingdom, or any of them, the secretary of state may, by warrant under his hand, empower any person or persons named in such warrant to take possession, in the name or on behalf of Her Majesty, of any railroad in the United Kingdom, and of the plant belonging thereto, or of any part thereof, and may take possession of any plant without taking possession of the railroad itself, and to use the same for Her Majesty's service at such times and in such manner as the secretary of state may direct; and the directors, officers, and servants of any such railroad shall obey the directions of the secretary of state as to the user of such railroad or plant as aforesaid for Her Majesty's service.

Any warrant granted by the said secretary of state in pursuance of this section shall remain in force for one week only, but may be renewed from week to week so long as, in the opinion of the said secretary of state, the emergency continues.

There shall be paid to any person or body of persons whose railroad or plant may be taken possession of in pursuance of this section, out of moneys to be provided by Parliament, such full compensation for any loss or injury they may have sustained by the exercise of the powers of the secretary of state under this section as may be agreed upon between the said secretary of state and the said person or body of persons, or, in case of difference, may be settled by arbitration in manner provided by the lands clauses consolidation act, 1845.

Where any railroad or plant is taken possession of in the name or on behalf of her majesty in pursuance of this section, all contracts and engagements between the person or body of persons whose railroad is so taken possession of and the directors, officers, and servants of such person or body of persons, or between such person or body of persons and any other persons in relation to the working or maintenance of the railroad, or in relation to the supply or working of the plant of such railroad, which would, if such possession had not been taken, have been enforceable by or against the said person or body of persons, shall during the continuance of such possession be enforceable by or against her majesty.

For the purposes of this section "railroad" shall include any tramway, whether worked by animal or mechanical power, or partly in one way and partly in the other, and any stations, works, or accommodation belonging to or required for the working of such railroad or tramway.

"Plant" shall include any engines, rolling stock, horses, or other animal or mechanical power, and all things necessary for the proper working of a railroad or tramway which are not included in the word "railroad."

In pursuance of an order in council, August 4, 1914 (statutory rules and orders, No. 1300, 1914), and section 16 of the act of 1871, quoted entire above, the secretary of state by warrant, dated August 4, 1914, empowered the president of the Board of Trade to take possession of all railroads (excluding tramways) and of the plants belonging thereto, in Great Britain. In pursuance of a further order in council, December 22, 1916 (statutory rules and orders, No. 93, 1917), the secretary of state by warrant, dated December 29, 1916, empowered the president of the Board of Trade to take possession of all railroads in Ireland and of the plants belonging thereto. These warrants, which remained in force for one week only, have in pursuance of the empowering sections been respectively renewed each week by indorsement upon the back of a form especially prepared for the purpose.

Great Britain declared war against Germany on August 4, 1914.

The first movement for taking over the railways was by order in council No. 1300 upon the same date, as follows:

AT THE COURT OF BUCKINGHAM PALACE, THE 4TH DAY OF AUGUST, 1914.

Present: The King's Most Excellent Majesty in council.

Whereas, by virtue of section 16 of the regulation of the forces act, 1871, it is lawful for the secretary of state, when His Majesty, by order in council, declares that an emergency has arisen in which it is expedient for the public service that His Majesty's Government should have control over the railroads in Great Britain, or any of them, by warrant, under his hand, to empower persons to take such action in relation to any railroad in Great Britain as is mentioned in that section:

"Now, therefore, His Majesty, by and with the advice of his privy council, is pleased to declare, and it is hereby declared, for the purposes of the said section 16, that an emergency has arisen in which it is expedient for the public service that His Majesty's Government should have control over the railroads of Great Britain.

ALMERIC FITZROY.

(Gt. Brit.-Manual of Emergency Legislation, 1914, p. 368.)

This was followed immediately by the warrant of the secretary of state (being in this case the secretary of state of home affairs), as follows:

"Whereas, by virtue of section 16 of the regulation of the forces act, 1871, it is lawful for the secretary of state, when His Majesty, by order in council, declares that an emergency has arisen in which it is expedient for the public service that His Majesty's Government should have control over the railroads in the United Kingdom, or any of them, by warrant under his hand to empower any person to take possession in the name or on behalf of His Majesty of any railroad in the United Kingdom, and of the plant belonging thereto, or of any part thereof, and to take possession of any plant without taking possession of the railroad itself, and to use the same for His Majesty's service at such times and in such manner as the secretary of state may direct.

And whereas His Majesty by order in council made the 4th day of August, 1914, has declared, for the purposes of the said section, that an emergency has arisen in which it is expedient for the public service that His Majesty's Government should have control over the railroads of Great Britain.

Now, therefore, in pursuance of the said enactment, I, Herbert Henry Asquith, a secretary of state, hereby empower the president of the Board of Trade to take possession on behalf of His Majesty of all the railroads, excluding tramways, in Great Britain, and of the plant belonging thereto or any part thereof and to use the same at all times during which this warrant or any renewal thereof remains in force, for the conveyance of any of the naval or military forces of His Majesty, or of any goods, stores, merchandise required for the use of His Majesty's fleet, or for the use of any of His Majesty's said forces, or to use the same for any other purpose, or in any other manner for or in which it is expedient to use it for His Majesty's service.

Fourth day of August, 1914.

H. H. ASQUITH.

(Gt. Britain Manual of Emergency Legislation, 1914, p. 369.)"

This warrant of August 4, 1914, running for a week only, as provided in the forces act of 1871, has been renewed weekly by indorsement on a specially prepared blank form (Army Form A 2080A), as follows:

"I, _____, a secretary of state, being of opinion that the emergency continues, hereby renew this warrant for a further period of one week from the _____ day of _____. _____ day of _____, 19____.

(Signed) _____.

(Gt. Britain Manual of Emergency Legislation, 1914, p. 370.)"

By virtue of an order in council, December 22, 1916 (statutory rules and orders, No. 93, 1917), the secretary of state by warrant, dated December 29, 1916, empowered the president of the Board of Trade to take possession of all railroads in Ireland and of the plants belonging thereto. Copies of the order in council and the warrant of the secretary of state as relating to Ireland have not been located, but it is assumed that they are identical in form with those pertaining to taking over the railroads of Great Britain, viz, for England, Scotland, and Wales, which have been given in full.

When war was declared the war office made the following announcement:

WAR OFFICE, August 4, 1914.

"An order in council has been made under section 16 of the regulation of the forces act, 1871, declaring that it is expedient that the Government should have control over the railroads in Great Britain. This control will be exercised through an executive committee composed of general managers of railways which has been formed for some time and has prepared plans with a view to facilitating the working of these provisions of the act. Although the railway facilities for other than naval and military purposes may for a time be somewhat restricted, the effect of the use of the powers under this act will be to subordinate the demands on the railways of the civil community with those necessary to meet the special requirements of the naval and military authorities. Under normal conditions will, in due course, be restored, and it is hoped that the

Leather trades and manufacture.
 Boot, shoe, and clog manufacture.
 Coke, manufacture of.
 Rubber trades and manufacture.
 Waterproofing of fabrics of paper.
 Electricity, gas, and water services.
 Stone, marble, granite, and slate quarrying, cutting and polishing.
 Bookbinding.

ORDERS NOT COMPULSORY.

The manufacturer is not compelled to accept work from the Government, and when a manufacturer accompanies an order to another manufacturer, with a certificate which would entitle this order, if accepted, to priority, the manufacturer to whom the order is tendered need not accept the order unless he desires to sell. There is, however, strong indirect pressure to accept priority orders, because a priority order gives assurance that steel and other scarce raw materials may be secured; the transportation will be affected; and also that a plant engaged upon priority work will have an adequate supply of labor.

ORDERS REGARDING MATERIALS

The priority committee issues orders from time to time that no scarce material shall be used except on class A work or class A and B work. For example, an order has been issued that copper, whether wrought or unwrought, should be used only for work on class A or B, and at one time an order was issued that spelter should not be used except in class A work, or for the purpose of necessary repairs or renewals involving the use of not exceeding 1 hundredweight of spelter.

REPORTS OF SUPPLIES.

The steel controller receives weekly reports from rolling mills giving the schedule of rollings, actual rollings, the shipments, and, of great importance, a statement of reasons for retarded output. The reports require the name of each customer and of the priority class in which the order is entered. The priority committee thus has actual control over all work done in the steel business. Reports are required of all stocks in Great Britain of certain listed scarce material, and from time to time the minister of munitions takes possession of all stocks of certain character. This has been done with regard to brass, brass scrap, copper and copper ore, etc.

SUGGESTIONS TO MANUFACTURERS.

The priority branch of the ministry of munitions of war issues such notices as:

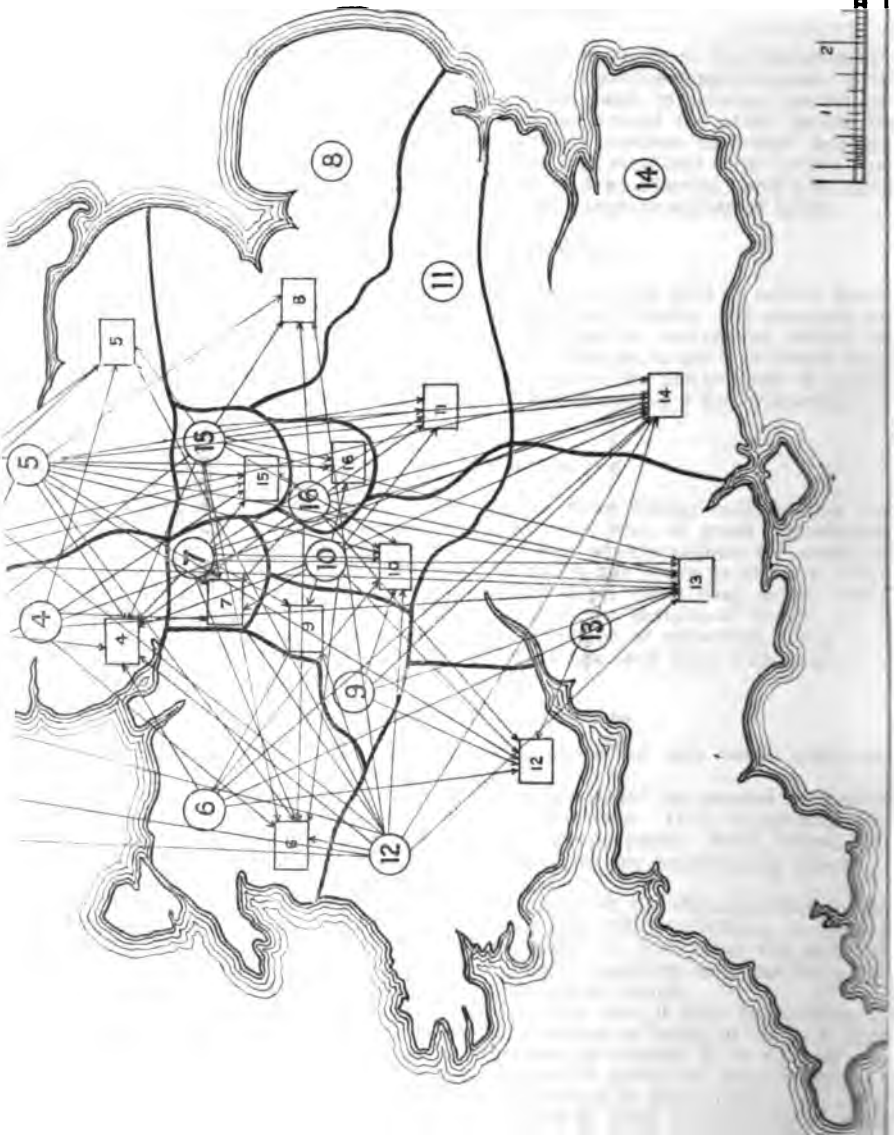
"Please note that no corrugated sheeting is available for general or export purposes. It can only be obtained for direct war work. It is, therefore, only a waste of time to apply for permission for other purposes. Steel, brass, and copper also can be supplied only for war work, or for maintaining essential national industries."

From time to time the priority branch requests of the manufacturer a list of all of his orders, giving customer's name and full particulars, including what proportion of the work remains to be done. As indicating the existing attitude toward class C work, it is stated class C contracts need not be given in detail, but their number and total value should be stated.

The following request is of interest: "In order that it may be possible to ascertain roughly whether you have so many orders in hand in class A that you are not able to make progress with orders of classes B or C, you are requested to indicate approximately the number of orders on your books not begun or not yet completed, but to give an indication in some other form most convenient to you which would render it possible to form an estimate of your ability, with the labor, plant, and the materials available, to execute at the present time B and C classes."

COAL DISTRIBUTION.

The comptroller of coal mines of the board of trade has recently issued an order that, effective at 6 p. m. September 8, 1917, all coal contracts are to be



abrogated. Thereafter each coal-producing district may sell coal only for delivery in certain stipulated areas. It is stated that this is done—

1. "That consumption of coal should take place as near the producing point as possible."

2. "That in view of the supply facilities afforded by the main trunk lines, the movement of traffic should follow these routes wherever possible."

3. "That the movement of coal should, as far as possible, be in well-defined directions; viz, north to south, north to southwest, north to southeast, east to west."

4. "That an area producing less coal than suffices for its own need should not send any portion of its coal to other areas. That an area producing more coal than it requires for the consumption within the area itself should distribute the balance to adjacent or convenient areas."

The comptroller of coal mines estimates that this arrangement will effect a saving of 700,000,000 ton-miles in the transportation of coal by the railways.

The annexed cut is a copy of the official map indicating the effect of this restriction on coal sales.

GENERAL PURPOSES OF PRIORITY.

The above illustrations indicate that the priority branch of the Ministry of Munitions has for its function to bring about harmonious action between the conflicting demands of the different departments of the Ministry of Munitions, of the Admiralty, the War Office and other Government offices, the railroads, the mines, and other quasi public service and approved industry.

All these different public interests are in more or less active competition among themselves for their share of raw material, manufacturing capacity, and labor of the country. The priority committee has been created in recognition of the fact that the decision between these several interests can not be left in war time to the uncontrolled operation of prices.

The work of the priority committee has been the consideration of definite concrete problems. Recently a small committee has been formed to meet occasionally and formulate general principles. This procedure first to meet conditions and then develop comprehensive principles is noteworthy.

COMMITTEE ON COOPERATION WITH THE COUNCIL OF NATIONAL DEFENSE,
WADDILL CATCHINGS, *Chairman*.

Attest:

ELLIOTT H. GOODWIN,
General Secretary.

(The illustration referred to is hereto appended.)

Senator KELLOGG. Did I understand you to suggest a basis of guaranty of the average dividends, was it, or dividends for some year, or the average dividends for a period of years?

Mr. THORNE. I suggest the regular dividend for the last year.

Senator KELLOGG. Yes. The regular dividend for the last year and one-half of the surplus to be allowed the carriers for the improvement of property, and the other half to be retained by the Government to use with less fortunate railroads, or as the Government should see fit.

Mr. THORNE. And as a reserve for paying the guaranties.

Senator KELLOGG. Is that substantially what you recommend as the basis of this bill?

Mr. THORNE. Yes; except that there should be no return on improvements built out of that surplus.

Senator KELLOGG. You mean during the future in the war?

Mr. THORNE. Yes.

Senator KELLOGG. You would consider that half retained by the Government as Government money to do as it pleased with? If it used it with another railroad, it would be practically using its own money with another railroad?

Mr. THORNE. Except that I would qualify it, in a measure, that it should be applied to improvements of railroad property or as a reserve to take care of the railroad guaranty.

Senator KELLOGG. As I take it from your statement, there are a large number of improvements of the railroads that might be termed nonincome-producing improvements, betterments that must be made from time to time, that do not produce an income?

Mr. THORNE. Yes, sir.

Senator KELLOGG. That might be illustrated, I suppose, by the system that you were talking about, the Pennsylvania system. It's New York station, I suppose, was practically a nonincome-producing institution.

Mr. THORNE. Very largely.

Senator KELLOGG. And the elevation of its tracks in the last 10 years between here and New York has probably not produced any income?

Mr. THORNE. I would say that there has been a great deal of money spent by the Pennsylvania in nonrevenue-producing improvements, and, on the other hand, they have spent a great deal of money out of the revenue for revenue-producing purposes.

Senator KELLOGG. All over the country there are all sorts of improvements that a railroad company must make that are either not revenue producing, or would not produce revenue in proportion to the investment, I suppose. Is that true?

Mr. THORNE. Particularly, that is one of the principal purposes of the surplus to take care of that character of improvement.

Senator KELLOGG. I take it that you think there should be allowed to the railroads a reasonable surplus to take care of such improvements, which should not thereafter be capitalized?

Mr. THORNE. Yes, sir.

Senator KELLOGG. Suppose the company has been in the habit of using other surplus to a certain extent for betterments and improvements, which might produce a revenue, or which would produce a revenue. Do you consider that good railroad economics, provided those improvements are not capitalized?

Mr. THORNE. Yes. I do not think that we would have control over surplus for outside investments.

Senator KELLOGG. Then I take it that even during the war you think there is a surplus which should be allowed the railroads, to be used for betterments and improvements?

Mr. THORNE. I would say this, that it is not necessary under the provisions of the bill if the Government agrees to build them out of capital upon which they may or may not require a return. If the Government requires the railroad to build a nonrevenue producing improvement, it would be unjust for the Government to require a return on that, and I think that that is provided in the bill very fully.

Senator KELLOGG. Suppose there is a railroad which has had a surplus during the last three years, if that period should be taken as the period, but instead of paying dividends it has invested its surplus in betterments and improvements. You would consider it fair to allow that railroad the same income, although it had not paid dividends?

Mr. THORNE. I think that it ought to be provided a surplus over a reasonable dividend. I would make that simply the maximum,

Senator. I have a suggestion of more concrete form that will get out all those details. My suggestion, or our suggestion, I am not the author of it any more than several other people who participated in the consideration of it, is that the bill should apply with this as a maximum, as stated in my preliminary statement, that for companies earning, say, or paying a dividend, either way, of 5 per cent or more on their capital stock, that their net railway operating income should be decreased by the amount applicable to the interest charges on all securities outstanding December 31, 1917.

Senator KELLOGG. In speaking of the English railways you spoke of the train miles. Of course I suppose their figures are not exactly comparable with ours, because their trains are very much smaller.

Mr. THORNE. I think that is correct.

Senator KELLOGG. And it is a fact, is it not, that in Great Britain they have capitalized their railroads, and they have capitalized the improvements generally?

Mr. THORNE. I think they have capitalized improvements.

Senator KELLOGG. And that is one of the reasons of their quite large capitalization?

Mr. THORNE. That is one factor.

Senator KELLOGG. I think the capitalization of the American railroads, as compared with thickly settled European countries, is very much smaller. They are all given in a document here, but I do not remember them. You spoke, in answer to a question by Senator Pomerene, about throwing these all into a court. I suppose, of course, some proceeding should be adopted whereby current interest on bonds from time to time should be paid.

Mr. THORNE. I would see no objection to that.

Senator KELLOGG. That should not be tied up by a long inquiry?

Mr. THORNE. No, sir.

Senator KELLOGG. And railroad stocks that have paid regular dividends for years, those dividends should be paid. They should not be tied up by a long inquiry.

Mr. THORNE. I would say this, that if the provision of the bill for the payment of 90 per cent of the dividends, or 90 per cent of the standard return, were adopted, that it might not take care of the dividends. If the railroads felt that the compensation was just, rather than prolong the investigation, in order to pay their dividends, they would be apt to take the dividends and interest; but if you guaranteed their dividends as well as their interest, regardless of what the courts might say, there would be a temptation for them to throw it all into the courts. I do not think, however, that even that will prejudice the owner of the stocks and bonds when he knew that the Government was going to pay the dividends and interest in full, so that if you adopt your suggestion the return would be very stable, and I do not want you to understand, Senator, as I am afraid one of the gentlemen on the committee did understand, that I am advocating throwing this into the courts. I am not advocating throwing this into court.

Senator KELLOGG. I did not understand that.

Mr. THORNE. I merely suggested it, that if you pay all of the rich, prosperous roads, that will get very large returns, and throw the bal-

ance into court, throw the poorer roads, those that profit less, into court, it would be unjust.

Senator KELLOGG. In answer to some one, I do not remember who, you said you would continue the Interstate Commerce Commission's control over rates?

Mr. THORNE. Yes.

Senator KELLOGG. What have you to say about the State commissions?

Mr. THORNE. I personally believe that we should not try to change the Constitution under the war power any more than is absolutely necessary, and it might be well to leave the present legal status just as it is under the act to regulate commerce. I do not believe that any harm will come to anybody, and I would not seriously object if you would except from the commission's regulation over rates the charges on the Government movement of troops and munitions, supplies, etc., only making the commission's jurisdiction extend over commercial traffic. Then I am quite certain there could be very little possible interference between the States and the Government.

Senator KELLOGG. But you would not let the Government fix absolutely the rates on materials going to factories to manufacture Government supplies, would you?

Mr. THORNE. That would be a commercial movement.

Senator KELLOGG. Everything except that which the Government directly ships?

Mr. THORNE. Yes, sir.

Senator KELLOGG. As the owner of the goods that are shipped in passenger trains, and the soldiers?

Mr. THORNE. Yes, sir.

Senator KELLOGG. You would have the Interstate Commerce Commission fix the rates as to that?

Mr. THORNE. Yes, sir.

Senator KELLOGG. Did I understand you that you would continue the State commissions' present jurisdiction over intrastate rates and other administrative matters over which they now have control?

Mr. THORNE. Yes, sir.

Senator KELLOGG. It has been objected here by, I think, Mr. McAdoo and perhaps Commissioner Anderson that that would interfere with the Government's operation of the railroads. Suppose the provision should, in substance, provide that all laws of the States and of the Federal Government in relation to the control of rates and the liability of carriers to shippers, employees, and otherwise, and all their rights, such as condemnation rights, should continue during the war, provided that the same should not interfere with the Government's direct operation, would that exception be too broad; would that exception give them control over rates if they wished to.

Mr. THORNE. Of course, as to the phraseology that has just been submitted by you, I would not like to answer it definitely until I had had a chance to consider it, but at first it appears to me that that would be adequate.

Senator KELLOGG. That is all I desire to ask at this time.

Senator CUMMINS. Have you finished with your direct statement, Mr. Thorne?

Mr. THORNE. May I refer back to the necessity for opportunity for investigation? Senator Kellogg has brought it up in his questions.

The investigation and determination of cases before a disinterested tribunal. In the hearings before the commission that tribunal has gradually developed well-settled policies and methods of procedure that enable the parties interested to have a hearing. Under the provisions of this bill if there is a dispute between the railroad and the Government on the compensation going from the Government to the railroad you provide for an arbitration board of the highest type of men, and then, of course, under the statutes and Constitution there is a possible appeal to the courts.

Recently the director general has provided for a wage board that will take care of questions of compensation going from the railroads to the laborers. Now, with reference to compensation going from the shippers to the railroads, we believe that there is equal justice in asking for an opportunity to be heard—to have their hearings in regular order—as in the past. The greatest danger of leaving it to a one-man power is that he does not have built up well-settled customs and rules; he is not acquainted with the proposition, as the commission is.

Let me give you one concrete illustration of how necessary it is for an examination over a substantial period of time before reaching any conclusion.

In the fall, I believe of 1916—what date was the Adamson law passed?

Senator GORE. September 8, 1916, I believe.

Mr. THORNE. The Adamson law was passed in the winter or spring, about March 21, 1917, it was sustained by the Supreme Court. Now, it was widely stated over the United States that that was going to cause an increase in expenses to the railroads in the neighborhood of \$100,000,000 or so, and it was used as a justification for a 15 per cent advance in freight rates. In fact, it was the principal justification used before the public. In addition to that, when it came to be tried before the commission there were innumerable advances in the cost of supplies and labor.

About March 22 the railway executives rushed down to the Interstate Commerce Commission and demanded an immediate advance in their freight rates. Mr. Rea, of the Pennsylvania, and Mr. Holden, of the Burlington, were probably the leading officials for the eastern and western groups of carriers, respectively. When those gentlemen came to Washington the reports for February were just coming in. They showed an enormous slump in net income. Immediately they asked for an advance, without any investigation, and I believe if the facts which I am now going to recite to you had been presented in executive session or in public before Director General McAdoo or before any man on the committee who has not been in these cases in the past that that advance would have been immediately granted, because of that wage advance and because of the increased cost of labor and supplies.

The facts were so compelling that they could not refrain from permitting the advance. We asked for a chance to investigate, to be heard. Some shippers protested; many, many city councils and many chambers of commerce protested that the advances ought to be granted, without any hearing. We asked for an opportunity to be heard upon our request to be heard. Such a hearing was granted. The commission decided to conduct a short investigation.

Before the hearings were closed I asked our accountants to make a check of the net income for one representative carrier, the Pennsylvania system. This system is the largest in the world. It handles 25 per cent of the traffic, approximately, between the Mississippi River and the Atlantic coast north of the Potomac and the Ohio Rivers.

When that sheet was laid before me one morning—and it is the second sheet of the document that is now before you gentlemen—I noticed that in February, 1917, the net income of the Pennsylvania Railroad dropped to less than one-fourth of what it was in January, less than one-fourth of what it was in February of the preceding year, and I noticed that the next month it jumped to over six times what it was in February. Substantially the same relationship, to a more or less extent, applies on the Philadelphia, Baltimore & Washington, the Pennsylvania Co., the Pittsburgh, Cincinnati, Chicago & St. Louis, and for the Pennsylvania system as a whole. Now, I did not cover all the little subsidiaries, but we covered the railroads belonging to the system sufficiently to embrace 92.79 per cent of the traffic of the Pennsylvania system, and for the system as a whole the net income for February was practically one-tenth of what it was during the preceding month, or the same month of the preceding year, or the subsequent month.

Then I looked back over prior years to see if that had ever occurred before. I found it occurred in just two instances. In 1913, March, there was a decline of something like one-third of what it was the preceding month, and then in April it went to a deficit on one road only, the P., C., C. & St. L. That did not occur on the other parts of the system and it did not occur for the system as a whole.

Looking at their stockholders' reports, I found that that particular month was the month when the heavy floods occurred in Ohio, Indiana, and down in that region where the P., C., C. & St. L. operates.

Senator POMERENE. What year did you say?

Mr. THORNE. 1913. Extracts from the stockholders' reports are copied there on the page in the footnotes.

(The exhibit described above is as follows:)

NATIONAL SHIPPERS' CONFERENCE.

[Exhibit No. 9, sheet No. 1.]

Mr. Patterson, general solicitor for the Pennsylvania Railroad, criticized our exhibit showing the railway operating income, above all operating expenses and taxes, for the month of April on the grounds that we included the Northern Central Railway in 1916 and 1917 and it was omitted from the Pennsylvania for prior years. On July 1, 1914, the Pennsylvania Railroad took over the lines of the Northern Central Railway. Consequently Mr. Patterson's objection is correct to the extent that the figures should be added for prior years. But to show the absolutely insignificant effect on the results we have here presented revised figures of the Pennsylvania system including the Northern Central Railway. These will be found on the second sheet of this statement.

Further, relative to the Northern Central purchase by the Pennsylvania, we call attention to the following significant facts:

On November 2, 1910, the stockholders voted to lease the road to the Pennsylvania Railroad Co. for 999 years from January 1, 1911, the holders of the \$19,342,550 stock to receive a stock dividend of 40 per cent, also 10 per cent in cash from treasury assets and a guaranty of 8 per cent on all the stock during the lease. However, several suits brought by minority stockholders prevented the lease from being entered into until July 1, 1914. The stockholders in

August, 1914, received in addition to the extra dividends called for by the lease named above a cash payment at the rate of 8 per cent yearly (28 per cent) on the 40 per cent stock dividend for the three and a half years between January 1, 1911, and July 1, 1914, representing accrued rental under the lease. Annual rental calls for 8 per cent dividends on the capital stock, interest on bonds, and a further sum of \$5,000, payable January 15 and July 15. The Pennsylvania, owning the majority of the stock of the Northern Central, gets back more than half the amount paid in dividends to the Northern Central as rentals.

But even assuming that it was a bona fide transaction with an entirely distinct corporation and not this intercorporate payment which we have just stated, even then we find that the Pennsylvania system had a railway operating income above all operating expenses and taxes in April, 1917, which was greater than for any preceding year in their history, except 1916. On the adjoining statement we have also added up the figures for the Pennsylvania system for each month. It will be noted that the railway operating income above expenses and taxes for the Pennsylvania system covered by the exhibit is greater in March than for the corresponding month of any previous year, excepting only that of 1916, and it is greater for the month of January than for any preceding year, except 1916. The month of February is the only one of the four months that failed to make this splendid showing.

We have not had time to cover the entire system, but the accompanying statement shows the figures covering 92.79 per cent of the tonnage and 74.38 per cent of the mileage of the system as shown in the carriers' exhibit prepared by the Bureau of Railway Economics for this case.

Tendency of railway operating income, Pennsylvania System.

[Exhibit No. 9, sheet No. 2, including Northern Central and Vandalla.]

[Authority: Annual Report Pittsburgh, Cincinnati, Chicago & St. Louis for year ending Dec. 31, 1913, p. 6.]

Road.	Miles oper- ated June 30, 1916.	Ton-miles revenue freight, June 30, 1916.	Month.	1908	1909	1910	1911	1912
Pennsylvania Railroad.....	4,534.29	26,842,287,529	January..... February..... March..... April.....	\$2,187,477.42 1,480,808.41 2,459,249.67 2,653,668.22	\$2,355,492.19 1,761,902.72 2,892,687.05 3,152,648.52	\$2,915,335.55 2,470,176.09 3,866,746.13 3,069,040.36	\$1,785,027.89 1,068,723.32 3,341,167.21 3,549,832.14	\$1,522,168.04 2,331,779.21 3,304,278.38 2,979,312.75
Philadelphia, Baltimore & Washington.....	717.14	1,414,674,323	January..... February..... March..... April.....	135,401.65 39,953.54 221,952.11 281,070.65	127,113.70 138,691.50 314,009.31 328,752.35	202,789.59 117,656.18 297,223.94 308,652.36	153,300.95 136,015.59 255,723.78 355,458.26	113,233.02 162,006.40 249,148.67 318,706.00
Pennsylvania Co.	1,754.64	8,741,568,841	January..... February..... March..... April.....	305,196.36 412,459.71 711,338.65 511,205.61	434,414.27 376,513.44 706,680.25 775,518.94	916,257.42 732,978.27 637,365.10 628,873.11	395,946.20 420,200.86 814,246.98 1,066,960.65	510,443.54 472,924.77 999,777.35 444,234.13
Pittsburgh, Cincinnati, Chicago & St. Louis.....	1,468.98	5,390,968,202	January..... February..... March..... April.....	542,447.07 643,045.17 886,385.95 536,068.68	600,673.24 629,354.31 838,526.08 662,766.32	1,057,409.09 767,153.34 1,059,573.63 616,270.61	717,659.82 486,128.47 907,176.36 944,241.14	757,248.12 782,864.22 1,099,834.74 675,892.14
Total Pennsylvania System.....	8,466.05	41,389,513,895	January..... February..... March..... April.....	3,170,522.60 2,579,267.82 4,288,638.38 4,002,043.16	3,517,693.40 2,906,465.96 4,751,933.69 4,909,686.12	5,091,791.65 4,067,068.88 6,169,512.80 4,622,883.44	3,054,297.86 2,631,364.24 5,313,517.33 5,906,128.19	2,903,092.72 2,734,585.40 5,452,036.14 4,416,073.02
Total Pennsylvania System as per carrier's exhibit.... Per cent total Pennsylvania system as shown above to total Pennsylvania System as per carrier's exhibit.	11,421.09 74.38	44,603,366,875 92.79	.....	.....	.....	.....	.....	.....
Road.	Miles oper- ated June 30, 1916.	Ton-miles revenue freight, June 30, 1916.	Month.	1913	1914	1915	1916	1917
Pennsylvania Railroad.....	4,534.29	26,842,287,529	January..... February..... March..... April.....	\$2,351,143.16 2,196,182.11 2,419,249.19 2,892,016.03	\$1,572,043.76 655,014.54 2,403,667.84 2,326,726.16	\$1,176,071.84 1,005,347.84 2,181,231.96 2,353,524.99	\$3,792,590.08 3,091,074.80 4,136,241.92 4,648,426.79	\$3,494,339.32 739,359.12 4,218,299.50 3,660,067.93

Philadelphia, Baltimore & Washington	717.14	1,414,074,323	January..... February.....	165,644.98 110,034.26	94,262.61 3,068.81	58,935.26 46,610.45	339,468.81 299,771.56	418,475.72 128,100.25
			March..... April.....	249,841.11 203,706.17	127,845.83 357,919.71	170,143.72 335,072.16	476,814.71 614,311.94	390,766.00 574,635.06
Pennsylvania Co.....	1,754.64	8,741,668,941	January..... February.....	750,653.86 272,550.86	500,008.97 26,705.84	99,214.49 244,086.88	1,129,187.20 934,686.40	264,717.19 1,073,941.21
			March..... April.....	301,537.75 367,866.01	636,027.67 512,049.08	658,789.08 728,413.02	1,461,386.58 1,527,209.16	507,689.28 841,041.01
Pittsburgh, Cincinnati, Chicago & St. Louis.....	1,488.98	5,390,663,202	January..... February.....	859,304.28 656,574.97	785,026.48 251,575.48	415,641.39 429,490.45	1,145,303.90 928,282.68	904,636.21 349,469.84
			March..... April.....	216,640.43 197,632.49	708,180.83 350,261.64	597,782.36 662,663.82	1,109,361.75 960,045.58	1,272,880.12 1,440,806.15
Total Pennsylvania System.....	8,495.05	41,839,513,985	January..... February.....	4,127,746.28 3,176,822.22	2,932,371.82 929,317.05	1,748,862.98 1,725,540.94	6,406,549.99 5,263,815.48	5,072,182.34 533,397.60
			March..... April.....	3,187,398.48 3,286,875.64	3,945,722.17 4,543,566.69	3,687,947.12 5,110,677.99	7,183,704.06 7,749,996.46	6,389,724.85 6,816,569.75

Increase over preceding year.		Increase over preceding year.		Per cent.	
Increase over preceding year.		Increase over preceding year.		Per cent.	
April—		April—			
1915.....	51.64	1911.....		31.22	15.42
1914.....	70.57	1910.....		67.66	47.45
1913.....	135.79	1909.....		87.85	58.84
1912.....	75.42	1908.....		93.65	70.35

¹ Significant loss.

² The rail operating expenses were (for 1913) \$36,349,121.66, an increase of \$4,166,158.81, of which \$1,853,637.78 was in maintenance of way and structures, for \$1,820,103 of which the March floods were responsible. The principal divisions of your main lines were put out of service on Mar. 25 and the service was not restored throughout until Apr. 13, although in the meantime service was resumed between principal points by detouring over such other connecting lines as could be used.

Senator POMERENE. The floods were not in February.

Mr. THORNE. I read the months as March and April, sir.

Senator POMERENE. Oh, I beg your pardon.

Mr. THORNE. The note itself is in the footnote there. The same thing occurred in one other period in 1914. Here again we find the net income dropping all of a sudden in one month to one-third or one-half of what it was the same month of the preceding year or the succeeding month of the same year. My curiosity was aroused. It did not occur on one subsidiary, as it did on the P. C. C. & St. L. when the flood occurred, but it occurred on every subsidiary.

The decline was sudden in 1917, which is not typical at all of the situation, as subsequent months demonstrated. It occurred just at the time the railroads rushed down to Washington and demanded an immediate advance without investigation. The sudden decline, apparently a calamity in the net income in 1914, occurred the same month.

Then I looked up the record in the Five Per Cent case, and I discovered that that decline—those returns were coming in at just the very time the railroads demanded an immediate submission of the Five Per Cent case, and they did not want to give me even 20 days to prepare a brief. Finally, as a concession, the commission granted it. I do not want to accuse the carriers of being crooked, though it is an amazing coincidence. Various factors may have legitimately caused that; a congestion in traffic may have occurred in just the same month on the same railroads at the particular time that the advanced-rate cases were being submitted or advances demanded.

In addition to that the decline may have been facilitated. It is possible to increase expenses in various ways, in accounting, and in the tying up of traffic, delay of trains, etc.

I do not want to accuse these gentlemen of that, but I want to say this: That the congestion did occur and, further, that they did pack the increase in wage that occurred in January into the February figures. They did that open and above board. There was not any deceit about it. The important fact that that exhibit demonstrates is the necessity to consider more than a short period, and, secondly, that the railway attorneys and officials, honest and upright and noble as they are, failed to tell the commission that those figures were not representative or typical. Sudden declines and increases in net are constantly occurring.

Senator POMERENE. Let me ask you there: Did you call the commission's attention to the fact that those were not typical?

Mr. THORNE. I did call it to their attention when it came to the argument of the case, but if we had been forced to a submission in March I could not have done it.

Senator POMERENE. Did the commission pass upon that question and ascertain whether or not those declines were typical?

Mr. THORNE. Yes; they held that it was not.

Senator POMERENE. Did they give any reason for that peculiar coincidence happening?

Mr. THORNE. No, sir. I do not accuse them of juggling their figures. When their accounts are under their control and there is a possibility of readjusting them, of course those possibilities exist.

Senator POMERENE. These accounts are at all times subject to examination by the experts of the Interstate Commerce Commission, are they not?

Mr. THORNE. Yes.

Senator POMERENE. There would hardly be any reason, then, why they would purposely do a thing of that kind.

Mr. THORNE. There are so many things, Senator, that even the experts that go to examine statistics can not determine. Suppose you suddenly increase the renewals during the period of several months. That would cause a decline. It may all be honest.

Mr. THOM. What do you intend to charge them with?

Mr. THORNE. Not stating to the commission that they failed to be representative of tendencies.

Mr. THOM. That is your charge?

Mr. THORNE. Yes, sir; the situation is very clearly shown in another exhibit, which shows the danger to ex parte hearings and hearings or conclusions reached without an opportunity to let the other side be heard or give the other side a chance to investigate. If we had been forced to trial the last of March, it would have been unquestioned defeat.

The exhibit that I speak of I do not have copies of, but this shows the variation month by month. For instance, because a certain month is low does not demonstrate that an advance should be granted. I have in front of me the figures for the month of July, 1916. I have for all the months of the year, for that matter, but I will take a few examples. The year 1916 was 26 per cent greater than the next preceding year. The year 1915 was 12½ per cent greater than 1914. Before that there was a decline of 1 per cent; before that a decline of 3 per cent; before that an increase of 8 per cent; before that an increase of less than 1 per cent; before that a decline of approximately 7 per cent; before that an increase of 16 per cent; before that a decline of 10 per cent; before that an increase of 77 per cent; before that a decline of approximately 2 per cent; before that an increase of 26 per cent; before that a decrease of 10 per cent; before that an increase of 13 per cent; before that a decline of 3 per cent; before that an increase of 30 per cent; before that an increase of 9 per cent; before that an increase of 22 per cent; before that an increase of 4 per cent; and before that an increase of 22 per cent.

The CHAIRMAN. How long a time are you taking to compute those percentages? They represent what length of time?

Mr. THORNE. The table covers the months of 1917 and 1916 compared to the corresponding months of previous years back to 1896.

Senator KELLOGG. You have no reason to believe those figures were juggled, have you?

Mr. THORNE. No; not at all.

Senator KELLOGG. They show large increases and decreases.

Mr. THORNE. Certainly; wide variations.

Senator GORE. That is the point, as I understand it, that the differentiation from the average must not be considered as conclusive?

Senator KELLOGG. What reason have you to consider that the figures in 1917 were juggled?

Mr. THORNE. I am not claiming that they were juggled. I am saying that it was not representative of tendencies, and it was so forcibly demonstrated in the 1911 Advance case that the commission made the following statement in regard to such showings:

It is urged that the seven months beginning April 1, 1910, do not show as favorable net results as the corresponding period in 1909 after all allowance has been made for increase of wages, but if an examination of the figures presented in this proceeding demonstrates anything it is that no reliable inference can be drawn even from a single year, much less from a few months.

That being true, if an advance in wage is granted now, it is no justification for an advance in rates until you have found the effect of tendency over a substantial period of time, just like we did last spring, and until you determine the policy of the Government, whether you are going to force a few shippers to bear the burden of an expense occasioned by war conditions, a policy that is directly contrary to that which the British Government has seen fit to adopt.

The CHAIRMAN. Mr. Thorne, how do the standard rates granted both by the Interstate Commerce Commission and the several State commissions compare now with previous years, the tariff that is allowed on standard commodities? How do the rates allowed the railroads now compare with a period of preceding years?

Mr. THORNE. Do you mean the relationship between State-made rates and interstate rates, or do you mean the level as a whole on all traffic?

The CHAIRMAN. The level as a whole on all traffic.

Mr. THORNE. Compared to the year 1890 or 1888, when the Interstate Commerce Commission commenced work, the average revenue per ton-mile last year is approximately 25 per cent lower. That is frequently used in justification or in support of the claim that the commission has forced reductions in rates. That claim is not true, as I will demonstrate in a few words.

Practically all of that decline occurred between 1887 and 1894, when the commission had no power to fix maximum rates. There was a decline between those two years that I have named of about 25 per cent. During that period the increase in net revenues of American railroads amounted to approximately \$100,000,000. Since 1899 the average revenue per ton-mile has remained practically the same, varying up and down. Now, I believe it is probably two-tenths of a mill less than it was a year or so ago, or three-tenths of a mill. The figure for 1915 or 1916 was higher than in 1889. In the eastern district, as a whole, the average revenue per ton-mile now is higher than it was in 1900.

Senator KELLOGG. Did I understand you over the whole country it is substantially the same as in 1900?

Mr. THORNE. 1899. The revenue per ton-mile must be taken with some degree of care as a test of rates. For instance, the length of haul may increase and thereby reduce the average, or a larger amount of heavy commodities may be handled, thereby reducing it, but the situation here in the country as a whole and in the eastern district has remained substantially constant so that that is a fair index of the level of rates as a whole. During the last period, from 1899 to 1917, during those 18 years, wherein the average level has remained substantially constant, the railroads' net revenues have increased. If I remember correctly, \$800,000,000; from 1890 to 1899 their net in-

crease was about \$100,000,000 and the freight revenues declined 25 per cent, indicating that the railroads shared with the public in the revolution in the industry that was occurring, but since 1899 the railroads have absorbed, instead of \$100,000,000, something like \$800,000,000, and their freight-rate level has remained substantially constant.

Senator GORE. What is that, 7½ mills?

Mr. THORNE. A little bit less than that. I think in connection with that that we should consider the increase in capital account and the increase in property account, all of which is reflected in the figures that I have previously recited to you.

Senator KELLOGG. Right there, if I may, what has enabled them to do that? Is it an increase of tonnage, an increase in size of motive power and size of trains and tons per train-mile, and so forth?

Mr. THORNE. Yes, sir; substantially that.

Senator KELLOGG. That is, they have been enabled to increase their net revenue by those factors.

Mr. THORNE. Yes; they have increased rates, too.

Senator KELLOGG. But the increase in rates since 1900 has not been much, as a whole.

Mr. THORNE. Well, on class traffic about 15 per cent between Chicago and New York.

Senator KELLOGG. In some places that is true.

Mr. THORNE. In all the eastern traffic, where half the traffic is hauled.

Senator KELLOGG. About the only thing in the country that has not enormously increased is transportation. The price of commodities which railroads buy and the price of labor can not keep on going up and the present rates maintained, can they? There has got to be a stop some time.

Mr. THORNE. May I answer that in my own way?

Senator KELLOGG. Yes; certainly.

Mr. THORNE. The 15 per cent that I stated to you was too modest. On the eastern traffic it has been much more than that, 5 per cent, 15 per cent, and then other advances.

Senator KELLOGG. That has not extended all over the country?

Mr. THORNE. It has extended throughout the entire East.

Senator KELLOGG. But the cost of commodities has gone up much more than that.

Mr. THORNE. Yes; the increase in the expenses occasioned by the increase in the cost of commodities has been more than offset by the increase in volume of traffic and the improvements in operation, and so forth, as is completely demonstrated by the figures I have previously cited, showing that the net above all these expenses is higher than ever before.

When I say, "than ever before," I mean within the last 20 years. Now, as to other commodities going up, I think it would be wise to distinguish in our minds between the price on commodities and the price on services. If you make that distinction, I believe you will agree with me that, on the whole, there has not been a substantial increase in the cost of services.

Senator KELLOGG. Commissioner Aitchison, I think it was, testified here that the cost of materials which the railroads have to buy,

or many articles—he did not say all—had, as I recollect, in the last year gone up about 50 or 60 per cent.

Mr. THORNE. In what period?

Senator KELLOGG. In the last year.

Mr. THORNE. That was based upon, I suppose, the investigation in the Fifteen Per Cent case.

Senator KELLOGG. I do not know what he based it on. He testified to about that, as I recollect it.

Commissioner ANDERSON. I remember there were some figures in the Fifteen Per Cent case, but I would not undertake to recite them.

Mr. THORNE. Senator, in that connection, it was testified in the Fifteen Per Cent case by Mr. Elliott that the prices in 1916 on railway supplies had gone up 60 per cent, and yet the astounding fact remains that the total average cost per ton mile had gone down and that the net revenue for the railroads as a whole in the United States and the ratio of that net revenue to property, and the ratio of that net revenue to capital, surpassed anything they had ever had before in their history, so that we must take that other factor into consideration before reaching conclusions.

Senator KELLOGG. It is a fact, is it not, that all materials, not only that the railroads but that everybody else had to buy in the last year have enormously increased from 25 to 100 per cent? Is that not true?

Mr. THORNE. There have been many large increases, even more than 100 per cent.

Senator KELLOGG. Pig iron, which was selling in the fall of 1916 at \$18 a ton, sold at \$55 a ton last summer, and the Government price is now \$33.50 or \$34, and a great many other articles outside of iron and steel are in the same proportion.

Mr. THORNE. Yes, and there have been other increases in taxes and increases in interest rate on obligations, and yet, Senator, in spite of all those increases in expenses and taxes, the net remaining over and above them has also increased to the extent I have just described to you.

As to future increase in the cost of labor and the cost of supplies occasioned by the war, you have the question of policy that I outlined a while ago. I do not need to repeat it.

Commissioner ANDERSON. Mr. Thorne, if I may ask one question: It is true, as a broad economic proposition that a railroad subject to the law of increasing return has been more fortunate and more able to meet the tremendous increased cost to which other industries are subject than almost any other single large industry in the country. is it not?

Mr. THORNE. I think probably that is correct.

Commissioner ANDERSON. That is the gist of the fact that in spite of increase in cost of labor and of many materials that the increased traffic has brought to them larger net returns than they ever had before in their history. There are minor factors but that is the controlling factor, is it not?

Mr. THORNE. Yes, sir. I was going to make the distinction a moment ago between the services and commodities. You take public utilities generally throughout the United States, selling telephone service, gas service, electric light, heat, and power service, as a gen-

eral thing there have been no substantial increases in those costs until very recently.

Commissioner ANDERSON. They are going up now.

Mr. THORNE. The fact is that most of them are kept down by law. I think, Mr. Chairman, I have nothing further.

The CHAIRMAN. You have completed your statement?

Mr. THORNE. I think so.

The CHAIRMAN. The hour of 5 o'clock having arrived, the committee will stand adjourned until 10 o'clock in the morning.

Senator CUMMINS. I want to ask if Mr. Thorne desires to-night he may be excused at this time?

The CHAIRMAN. Yes; he may be excused.

Senator KELLOGG. I have asked all the questions I wish to, but whether the other Senators have any additional questions I do not know.

The CHAIRMAN. The committee stands adjourned.

(Thereupon, at 5 o'clock p. m., the committee adjourned until Wednesday, January 23, 1918, at 10 o'clock a. m.)

GOVERNMENT CONTROL AND OPERATION OF RAILROADS.

WEDNESDAY, JANUARY 23, 1918.

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE COMMERCE,
Washington, D. C.

The committee met, pursuant to adjournment, at 10 o'clock a. m., in the hearing room of the committee in the Capitol Building, Senator Smith of South Carolina presiding as chairman.

The CHAIRMAN. The committee will come to order. Mr. Plumb, will you take the stand.

Senator POINDEXTER. Before this witness starts with his statement, I should like to make one inquiry. When Senator Bristow left the stand the other day he had not finished his statement. I should like to inquire when there will be an opportunity for him to go on.

The CHAIRMAN. Just as soon as we get through with these gentlemen here to-day.

STATEMENT OF MR. GLENN E. PLUMB, REPRESENTING THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS, THE BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, THE ORDER OF RAILWAY CONDUCTORS, AND THE BROTHERHOOD OF RAILROAD TRAINMEN.

The CHAIRMAN. Will you give the committee your name and address?

Mr. PLUMB. My name is Glenn E. Plumb; my residence is Chicago, Ill.

The CHAIRMAN. Also your official status.

Mr. PLUMB. Mr. Chairman and Senators, I appear here formally representing the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen and Enginemen, the Order of Railway Conductors, and the Brotherhood of Railroad Trainmen. These four organizations represent directly a membership of approximately 400,000 employees of the railroads which are now under Government control, and this is nearly 25 per cent of the total number of men employed in this industry. Indirectly, we represent all employees, whether directly authorized to do so or not. The economic results of the theories which we advocate will be felt by all employees as directly as they will be felt by our own membership, and, in fact, the economic results of these theories are as of much importance to the entire public as they are to the employees in that the employees will receive no special benefit from the application of the theories which we advocate other than that they will receive as a part of the general public.

The query naturally arises in your minds, What interest can the employees of these railroads have that would warrant their appearance in this investigation and advocating any theories whatsoever regarding the relation of the Government to these properties?

I wish to set forth clearly just what our interests are so that you may understand why we are here and what induced us to present the theories that we advocate to this committee for your consideration.

First, I would have you clearly understand the financial magnitude of the interests which we represent directly and indirectly. There are to-day, as estimated by the experts who have testified before you, 1,700,000 men directly employed in railroad transportation. Allowing an average of three dependents to each employee, we estimate that 6,800,000 citizens are directly dependent for their livelihood upon the operation of these public highways. That is, about one-sixteenth of the total population of the United States is more directly interested in the correct solution of these problems than any other question of governmental action unless it be the single problem of successfully prosecuting the war.

The general public who are taxed to pay the expenses of railway operation by the imposition of rates and charges pay to the 1,700,000 employees a sum of \$1,500,000,000, approximately, per annum. The public paid during the year 1916 as compensation for the use of the capital invested in these railways, both interest on bonds and dividends on stock, \$827,000,000. We paid to the labor invested in these railways nearly twice as much as we paid for the use of the capital and once and a half as much as the total net earnings of the railroads. If we were to capitalize the amount paid to labor on the same basis as the carriers have capitalized the amount paid to capital, you would find that there was a labor investment of upwards of \$30,000,000,000 in these properties as against a capital investment of \$20,000,000,000. This explanation presents both the social and financial magnitude of the interests now appearing before you.

I wish now to state the reasons why labor should be heard in the determination of the policies which shall control the governmental functions of directly operating these properties. While these public highways were under the control of private capital, operated through corporate organizations, the employees have had to deal with the corporate representatives when they asked for an improvement of working conditions or an increase in the scale of wages.

Under past conditions rates and charges which these corporations receive for the use of these public highways have been fixed by law. Whenever the representatives of these organizations have dealt with the owners of the railways in regard to wages they have invariably been met with the statement by the owners that—

Since our rates are fixed by law and we can not increase our receipts without legislative sanction, and since our outstanding issues of securities, to wit, our capitalization, requires in the way of the payment of interest and dividends all that we now earn over and above operating expenses, it is impossible for us to increase your wages unless you can help us to procure an increase in rates.

When the same owners of these properties are dealing with the Government in regard to the fixing of rates or in regard to the amount of compensation which they are entitled to receive for the

services which they render in operating these highways, their position invariably is—

The rates which are now fixed by the Government are not sufficient to permit us to pay interest on our bonds and a fair dividend upon our outstanding stock out of the amount remaining from gross receipts after the payment of operating expenses. Either you must increase our rates or we must reduce operating expenses by cutting down the service we are now rendering to the public.

In the present hearing representatives of these corporations have asserted before this committee that they have a legal right to appropriate to themselves as the property of the stockholder all earnings under established rates in excess of absolute operating expenses and that the Government must pay to the owners of these properties as the value of the use of the property a sum fully equal to the net operating income and that such net operating income may not be decreased in any manner in increasing operating expenses over and above the expenses as they existed on the date of taking over of the properties.

In every such negotiation in the past, whether between the employees and the owners of the railways in regard to increased compensation or between the Government and the owners of the railways in regard to existing rates or the establishment of new rates, every attempt of the employees to improve their condition has been exploited before the American people as a demand made by the employees for an increase in rates. Under the new conditions imposed by Government control, if the railroads are permitted to appropriate to private profit the total net operating revenues as they existed prior to the taking over, then again any increase in operating expenses because of an increase in wages, must be borne entirely by the Government. And again the public interest and the interest of the employees are placed in direct opposition, one to the other.

This we believe was entirely wrong; that the interest of the public and the interest of the employees are coincident and that we seek to establish.

A year ago the brotherhoods, by permission of the Interstate Commerce Commission, entered their appearance in the valuation proceedings then being carried on by that body. We had made what we considered a complete study of the history and legal principles governing the relations of private interest in railroads as public highways and the public interest in such instrumentalities. We became firmly convinced that there was a great misapprehension as to the extent of the private interests so conferred upon railroad corporations and much doubt and obscurity as to the extent of the public interest which had been retained by the Government in these public highways. We found that, while gross receipts were definitely known and ascertainable to the last penny, and that while the operating expenses could be ascertained with like exactness, the amount of capital invested in the service of the public, not only was ascertainable with the same exactness as the other two factors, but that the entire methods of these corporations from their inception down to the present time were intended to prevent the obtaining of such information. We believed that the ascertaining of this information was absolutely essential to any determination of the existence of private interests in these public highways or the limitations imposed

thereby on the public interests which had been retained therein. We found two cardinal principles established from the foundation of the Government that seemed clearly to define the extent of the private interest held in these highways and the limitations which such private interests imposed upon the public interest out of which the private interests had been carved. We are convinced that when these two principles are understood and correctly applied to the problems now in hand, it will be found that full justice can be done to the demands of the employees without in any way increasing the burden of taxation placed upon the people for the use of these highways; that full and adequate justice can be done to the agencies operating these railways, insuring them a full and fair return upon everything which by right and law belongs to them, and that full and adequate justice can be done to the public in securing them against unjust taxation in the form of rates and charges which produce an income greater than may be required to meet the legitimate operating expenses and all legitimate returns for capital, and at the same time permit a legitimate reduction of rates. A recognition and application of these principles which have been established in the earliest decisions relating to railways and which have been laid down in legislative enactments and ordained in constitutions will forever prevent the levying of a tax in rates and charges of more than is required to meet all lawful expenses of operation and the payment of all legal returns and will prevent the absorption by capital of any amounts collected in excess of such lawful demands.

The first principle we stated as follows:

Railroads are public highways. They are so in the nature of things and so declared by the Supreme Court from the beginning. (Citing only *Olcott v. Supervisors*, 83 U. S., 678, and *Smyth v. Ames*, 169 U. S., 466, p. 544.) They are so declared in nearly every State constitution that has been adopted since railroads became known to the American public.

This constitutional declaration, however, is merely the embodiment of a principle which was clearly and firmly established before such constitutions were adopted. From the earliest days of history it has been deemed one of the functions of the State to preserve the rights of way across and over privately owned lands for the purpose of affording to the subjects of the State a free and uninterrupted right of passage. The development of any nation toward higher civilization has always been very correctly measured by the number, extent, and condition of its public highways. Lord Bacon said:

There be three things which make a nation great—good roads, good laws, and a contented people.

The first of these prerequisites to national greatness is "Good roads." The exhibit introduced by Mr. Thom shows a total of 258,000 miles of railroads in the United States which constitute the extent of the public highways, the operation of which has been reassumed by the Federal Government as a direct governmental function. The Supreme Court very early held in the case of *Alcott v. Supervisors* (83 U. S., 678), that—

Such a road is a highway whether made by the Government itself or by the agency of corporate bodies or even individuals, when they obtain their power to construct it from legislative grant. * * * No matter who is the agent, the function performed is that of the State. * * * They (public highways) have always been governmental affairs and it has always been recognized

as one of the most important duties of the State to provide and care for them. * * * In their very nature they are public highways. * * * True, they must be used in a peculiar manner and under certain restrictions, but they are facilities for passage and transportation afforded to the public, of which the public has a right to avail itself. * * * A railroad built by a State no one claims would be anything else than a public highway, justifying taxes for its construction and maintenance, though it could no more be open to public use than is a road built and owned by a corporation.

And again, in *Smyth v. Ames* (169 U. S., 466, p. 544), the court said:

A railroad is a public highway and none the less so because constructed and maintained through the agency of a corporation deriving its existence and power from the State. Such a corporation was created for public purposes; it performs a function of the State. The only difference to public highways devoted to railroad purposes and public highways used as streets lies in the peculiar manner in which they must be used. A public highway, built by the State for railroad purposes, would have to be used in the same identical manner and under the same identical restrictions as would be imposed upon a public highway built for railroad purposes by a corporation.

The railroads, therefore, being public highways, their operation being a function of the State, are, in the nature of things, matters purely of public concern. No individual could acquire a public highway or any right or interest in the use of a public highway, differing in any degree from the right or interest which all other individuals held in the same highway unless such right or interest had been granted to a particular individual by legislative enactment. There is no such thing as an inherent individual right in the ownership or use of a public highway. Only such rights or privileges in public highways can be claimed or exercised by private individuals, as have been expressly granted by the State. All rights and privileges which do not pass by the express terms of the grant, still remain a part of the public domain, out of which such private interests have been carved by legislative enactment.

However, as applied to railroads, we are not dealing with any individual interest whatsoever. At the present time all railroads are owned and operated by corporations; therefore the questions of individual interests as distinguished from corporate interests, do not arise in present-day conditions. I therefore come to the second fundamental proposition which we have stated, as follows:

A railroad corporation, like other corporations, as against the State, can acquire no property, interest in property, rights, privileges or franchises other than those expressly conferred in its charter. Where the privileges conferred upon such corporation are carved out of the public domain, nothing passes in excess of the express terms of the grant and all that is not included within the grant, still remains a part of the public domain.

This principle has been repeatedly declared and firmly adhered to by our Supreme Court ever since the decision in the *Dartmouth College case*. In *Knoxville Water Company v. Knoxville* (200 U. S., 22, p. 33), the court said:

The doctrine is firmly established that only that which is granted in clear and explicit terms, passes by a grant of property, franchises or privileges in which the Government or the public has an interest.

Now it can not be denied that we do have an interest in railroads, their operation being a function of the State; the State has the entire interest, and where it has made a grant, only that which it

has granted passes to the individual, and all that is not included within the great remains with the State.

And again, in *Blair v. Chicago et al.* (201 U. S., 400, p. 471), the court declared:

Concurrent with this principle and to be considered when construing an alleged grant of this character, is the equally well established rule which requires such grants to be made in plain terms in order to convey private rights in respect to public property, and to protect future control of such privileges in the public interest.

And again in the same case the court said:

The principle is this: That all rights which are asserted against the State must be clearly defined, and not raised by inference or presumption; and if the charter is silent about a power it does not exist.

From the two fundamental principles which I have just announced, if they are to be accepted, it necessarily follows that any right of property, franchise, or privilege which the carrier asserts against the Government must be clearly and fully expressed in the grant under which the right is asserted. If no authority is expressly given in the charter of the corporation for the assertion of such right, then it can not be successfully asserted against the Government or the public and the value which would accrue to the corporation by reason of the successful assertion of such right, lacking express authority therefor, must be a value which was retained by the Government on behalf of the public when it made the grant.

Courts can not grant corporate franchises, and he who claims a privilege must assert the legislative grant upon which the privilege is founded. If his assertion rests upon a court's judicial determination and in that determination no construction of the grant is involved, then as against the State no right is vested in the corporation by reason of such judicial determination.

I claim that that principle controls such decisions as may be called to your attention. While it is claimed that property rights of railroads had been defined, yet if you ask one who presents such a decision to you what the provision of your charter was before the court, he will have to confess that there was no charter provision before the court and that the court did not, in any decision which purports to define property rights, have before it any charter limitation or any constitutional limitation, and that decision is not a construction of a charter right or a legislative grant.

Constitutions do not grant any powers to corporations; they merely guarantee the protection of the powers, rights, or privileges which have been granted; and when a carrier asserts a right or privilege as coming within the protection of the constitution, in order to bring it there the carrier must show the express terms upon which such right or privilege is founded. Rights once granted and within the constitutional protection can not be taken away by legislative enactment without making due compensation therefor; but any legislative action which may be construed as expressly recognizing a privilege asserted against the State can frequently be made the basis for a further claim of vested right, as being a legislative recognition of a franchise asserted against the State and therefore equivalent to a legislative grant of such franchise.

In the bill now pending before you it is proposed to guarantee to each and every carrier the payment of an annual sum equivalent to

the average annual net operating income for the past three years. The language of the bill perhaps does not expressly recognize the existing legal right of the carrier to receive such compensation, but it does recognize the right of the carrier, and it does in itself expressly confer such a right to receive such an amount annually so long as the properties are operated by the Government under the provisions of this bill.

The representatives of the carriers have appeared before this committee and have vehemently asserted that the compensation provided in this bill is not sufficient, because the carriers have a legal right to all of the net earnings, and that, in so far as this bill deprives them of that legal right, it is an unwarranted exercise of governmental power. If this bill be enacted in its present form, then it should contain proper provisions that it is a war measure purely, that the compensation therein provided shall be construed purely as a war measure, and that nothing contained in the entire bill shall be construed as a legislative recognition or declaration of any corporate or public interest in railroads, and providing for a complete restoration of the status quo ante, without permitting any provision of the pending bill to be used by either the public or private interests as a precedent for the determination of what those public and private interests might actually be before the taking over or upon the restoration of the status quo ante.

In the absence of such salutary safeguards, we will find, at the conclusion of the period of Government operation and the beginning of the period either of private ownership and operation or Government ownership and operation, that there has been such a recognition of private interest in these public highways as will have validated all claims made by the corporations as to the present existence of their private interests, and as effectually to legalize the issuance of all securities heretofore omitted, without regard to the question of the actual investment made in the public service, and the carriers will have reduced to their private ownership all accrued increment in value of land, labor, and materials, and all work that has been done by the Interstate Commerce Commission for the purpose of determining the fair value of the investments in these properties will have gone for naught.

We have submitted an amendment to sections 1, 2, and 3 of the present bill intended to prevent any legislative recognition of the rights, privileges, and franchises of the carriers in excess of those already granted. As I have said before, all private corporate interests in railroads must rest upon legislative grant or sanction. The extent of these property interests and franchises must be determined from the existing legislative grants, but without full investigation and recognition of such grants there can be no basis for determining the extent or value of the grants now in existence or the rights which the carriers have for demanding from the public revenues for the use of their properties.

We recognize that this is an extraordinary situation, calling for extraordinary relief, and that in taking over the property of the railroads as a war measure there is not time to determine immediately just what private interests exist in these properties, and that when the Government does resume the exercise of these governmental

functions which it has delegated to private corporate interests it must make due and adequate compensation for the resumption of such functions.

We have therefore adopted the plan suggested by the President as an interim arrangement requiring the payment to the carriers until a final legal determination of the extent of their rights can be had of a sum equivalent to the average net operating earnings for the past three years. This might be sanctioned as an emergency compensation; it can not be justified as a permanent arrangement. We have also provided that before the 1st day of July, 1918, each and every carrier shall file with the Interstate Commerce Commission its petition in the form prescribed by the commission for the purpose of ascertaining the total amount of money upon which the corporation is entitled to receive a return under the provisions of its charter, as of the date of January 1, 1918, and that upon the ascertainment of that amount it shall receive a sum equivalent to such a per cent as Congress may deem fair upon the amount so ascertained, and that proper adjustments shall then be made to cover the payment of temporary compensation theretofore made.

I have drafts of that amendment which I wish to submit.

Senator UNDERWOOD. Did you draft an amendment with reference to the final clause you spoke of a while ago?

Mr. PLUMB. I have drafted such an amendment, Mr. Underwood, which I presented to Mr. Anderson, and he now has it under consideration.

Senator UNDERWOOD. Will you be kind enough to present it to the committee?

Mr. PLUMB. I shall be glad to do so.

Senator ROBINSON. You refer to the amendment he spoke of saving the relative rights of the public and the corporations in these respective roads?

Senator UNDERWOOD. I mean the amendment he referred to a while ago in reference to the termination of the power under this bill when the war——

Senator ROBINSON. I think you have in mind the same amendment I have, although the phase that impressed me seemed to be a different one.

Mr. Plumb. My proposed amendment does not provide for the fixing on a definite term at all, but merely that when the termination shall come that the rights——

Senator ROBINSON. All questions as to the relative rights between the public and the corporations shall be reserved as to the basis?

Mr. PLUMB. The basis for the determination of those rights must be the laws as they existed prior to the passage of this bill, and that this bill shall not furnish the basis for any rights.

The CHAIRMAN. In other words, that this shall be recognized as a war emergency measure?

Mr. PLUMB. Purely and simply.

The CHAIRMAN. Not involving the principles during the time of peace, and shall exist when the war shall terminate?

Mr. PLUMB. Exactly.

Senator ROBINSON. And should be the precedent for permanent legislation?

Mr. PLUMB. Yes; just as was done in many of the English war measures. That provision was inserted that the rights should be determined upon the status quo ante when the emergency had passed.

This amendment has in italic type the additional matter which we have suggested, and in roman type the same language that is found in sections 1 and 2 of the original bill. You are familiar with the original matter, but I want to call attention to the original matter (reading):

AMENDMENT TO SECTIONS 1, 2, AND 3, H. R. 8172.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled*, That the President, having in a time of war taken over the possession, use, and control (called herein Federal control) of certain systems of transportation (called herein carriers), is hereby authorized to agree with and to guarantee to any such carrier that during the period of such Federal control it shall receive as its just compensation an income at an annual rate to be determined as hereinafter provided.

That the carrier owning each and every system of transportation now under Federal control is hereby authorized and directed to file its petition before the Interstate Commerce Commission before the 1st day of July, A. D. 1918, for the purpose of having the Interstate Commerce Commission ascertain the total amount of money upon which said corporation is entitled to receive a return under the provisions of its charter (herein called total amount) as of January 1, 1918.

That upon the determination of such total amount by the Interstate Commerce Commission, the carrier or the United States, or both, may appeal to the Supreme Court of the United States for a review of the decision of the Interstate Commerce Commission.

That upon the final determination of such total amount by the Interstate Commerce Commission or the Supreme Court, in case an appeal is perfected and prosecuted to a conclusion, the United States shall pay to said carrier a sum equal to — per cent per annum upon the amount so fixed (herein called the return upon total amount), such amount to be paid in two semiannual payments upon such dates as the President may direct.

That pending the final determination of such amount the President is hereby authorized to agree with and to guarantee to any such carrier that shall file its petition with the Interstate Commerce Commission as hereinbefore provided that during the period of such Federal control and until such total amount shall have been finally determined, as hereinbefore provided, such carrier shall receive as its just compensation an income at an annual rate equivalent as nearly as may be to its average net railway operating income for the three years ending June 30, 1917 (called herein standard return); said net railway operating income for the purposes of this act shall, as to carriers making returns to the Interstate Commerce Commission, be computed from such returns, excluding, however, deb'ts and credits arising from the accounts, called in the monthly returns "leased road rents and miscellaneous rents," provided, however, that no Federal taxes in excess of taxes assessed during the year ending June 30, 1917, shall be charged against revenue in computing such standard return.

Any net railway operating income in excess of such standard return shall be the property of the United States; the amount of such standard return as accruing during said period of three years shall be determined by the Interstate Commerce Commission and the certificate of said commission as to the amount of said net railway operating income shall for the purpose of such agreement and guaranty be taken as final and conclusive.

Upon the final determination of such total amount as hereinabove provided the United States shall be credited in its account with each carrier, with the excess, if any, of the sum of the standard returns over the sum of returns on total amount that would have accrued at that date, together with 6 per cent upon such excess, and shall be debited with the sum of the excess of the returns on total amount over the sum of the standard returns paid to such carrier by the United States, together with 6 per cent upon such excess.

The Interstate Commerce Commission is hereby authorized to prescribe the form of the petition to be filed by the carrier and the procedure thereon by which such total amount shall be determined.

SEC. 2. That if no such agreement is made for the payment of standard returns, as above provided, the President may nevertheless pay or cause to be paid to any carrier that shall file its petition with the Interstate Commerce Commission as above provided, while under Federal control and pending the final determination of the total amount as above provided, an amount not exceeding 50 per cent. of such standard return; any difference between the amount of the standard return so paid to such carrier and the total sum of the returns on total amount which may have accrued at the date of the final determination thereof shall be adjusted by proper debits and credits as provided in the preceding paragraph hereof.

(Strike out all of section 3.)

(NOTE.—Words in italic type are new matter; words in roman type are the same as in the original draft.)

Mr. PLUMB. Section 3 in the original bill was intended to provide a forum and a means of settling disputes between the Government and any corporations that failed to agree or insisted on greater rights than the bill recognized.

Senator UNDERWOOD. You do not propose to adopt what is called in this bill the "standard return" as the final basis of adjustment, but in section 2, where you refer to the standard return, you merely refer to what was in the folds of the original bill as a basis of temporary adjustment?

Mr. PLUMB. Yes; I use the "standard return" merely as a temporary basis of compensation to bridge over the time until the actual basis can have been determined, providing for a due credit and debit adjustment when that basis is reached.

Senator CUMMINS. You intend that under section 1 the use of the property, whatever it may be, shall be finally determined?

Mr. PLUMB. Shall be finally determined.

Senator CUMMINS. Do you believe that is a representative function to say that the Government shall pay to the carrier a sum equal to any fixed per cent, which may be inserted in the blank which you have left?

Mr. PLUMB. I do, Senator, because the fixing of rates is now and has always been considered a legislative function, and that function is properly exercised if it does not deprive the carrier of a reasonable return upon something. Now, by the carriers that sometimes is said to consist of the value of their property and at other times the cost of reproduction and at other times the amount of capitalization outstanding and at other times investment. I contend that the investment actually made or the provisions of the charter must furnish the basis of that something upon which the legislature has the right to fix a reasonable return.

Senator CUMMINS. I want to get clearly your idea. Of course, the fixing of the rates which a private corporation receives for the service is a regulation which is valid or invalid dependent upon its reasonableness or whether it is confiscatory or not, but when the Government takes the possession of the property—we will not concern ourselves with what the property may be or what its value may be—do you claim the legislature can fix for the use of the property an annual percentage which the carrier must accept as just compensation under the Constitution?

Mr. PLUMB. Yes, Senator; because I fail to distinguish between directly fixing a return on capital, or whatever the base may be, and indirectly fixing a return through establishing a rate. The one is equivalent to the other.

Senator CUMMINS. There seems to be some logic in the argument, but it is contrary to our established beliefs.

Mr. PLUMB. The taking over of the railroads for governmental operation is contrary to all established precedent. We must ascertain the legal basis upon which it can be done, and when we consider that the operation of railroads is now and always has been a function of government, then it could not be so delegated that that function could not be reassumed by the Government when the necessity arose, and all that is required is that there shall be due compensation made for the rights that are reassumed. In this case we are reassuming merely the right to operate the railroads.

Senator CUMMINS. That is the very point, the word "due" introduces the whole difficulty. Is it a legislative function or a judicial function to say what is due, or just compensation, if you take the property itself, whatever it may be?

Mr. PLUMB. I consider that if you take the use of the property compensation must be made for that taking just as completely as if you took the property, and the determination of the basis upon which you take either the use or the property is a judicial question. The determination of the rate which shall be allowed on that basis is a legislative question, and if the legislature asserts that rate-making power unlawfully it will be so held by the judiciary, but if it exercises it reasonably why, then, the judiciary will uphold that exercise of the legislative power.

Senator CUMMINS. Just one further question so that I may get it clearly in my mind. If the Government were taking the property, I mean the title, to whatever property the corporation may have in railroads, then the determination of the value of the property would be a judicial question?

Mr. PLUMB. Certainly.

Senator CUMMINS. The legislature could not declare what its value is?

Mr. PLUMB. No.

Senator CUMMINS. But if we are taking the use of the property, the value being ascertained—

Mr. PLUMB. Judicially.

Senator CUMMINS. Judicially, we can legislatively attach a rate of return which, in our judgment, will be an adequate or fair rate for the use of that property during the time we are in possession?

Mr. PLUMB. That is my understanding exactly, Senator.

The CHAIRMAN. Do you make the distinction that the interest one shall receive on property is not property? Is that the sense that you use the word property?

Mr. PLUMB. That requires a little further definition, Senator. The return that one shall receive on property devoted to a public use is a matter of legislative discretion which is not included in the reserve power of legislation. The interest which one may receive on an investment is an entirely different matter, but an investment made in property devoted to the public use, or property devoted to the exercise of a governmental function, was invested on condition that its rate should be reserved, the rate of return should be reserved, and you can call it interest as between the corporation and the Government; it becomes interest between the corporation and its security

holders, but, as between the corporation and the State which has granted it its franchise, it is not interest; it is a return for public service under the terms contained in the grant.

The CHAIRMAN. Your contention, then, is that whatever allowance we may make legislatively for the use of the property stands exactly upon the same ground that the rate the Interstate Commerce Commission allows?

Mr. PLUMB. The rates prescribed by law, whether by the Interstate Commerce Commission or by State legislatures or State commissions.

Senator POINDEXTER. Or it might be by the direct act of Congress!

Mr. PLUMB. It might be by the direct act of Congress.

The CHAIRMAN. We have delegated the power to the Interstate Commerce Commission.

Mr. PLUMB. Yes; it is delegated power in any event.

Senator POINDEXTER. The rate of return on these investments is fixed indirectly by the rates that the railroad is allowed to charge for its transportation, is it not?

Mr. PLUMB. It is.

Senator POINDEXTER. And any court, in passing upon the question of the value of these properties, would be compelled to take into consideration, in determining what the value was, the rates which were fixed by law, would it not?

Mr. PLUMB. No, Senator; that is the one assumption that can not be conceded. The rate regulates the return, but it has nothing to do with value. Value, or investment, or whatever may be the basis for fixing the rate, will affect the rate, but the rate can not affect the base.

Senator POINDEXTER. Suppose there was a law fixing rates that yielded 6 per cent return on the investment, and the courts had to determine the value of the investment, could they escape taking into consideration the rate?

Mr. PLUMB. They must take into consideration the rate to see whether or not it does permit a 6 per cent return on the investment, but they can not take the rate into consideration to determine what the investment is.

Senator POINDEXTER. That is an entirely different question, the amount of the investment, but the value of the property——

Mr. PLUMB. Now, the value of the property, if that is a product of investment, multiplied by rate produces value.

Senator POINDEXTER. Consequently, they would have to take into consideration the rates?

Mr. PLUMB. No; because the rate is subject to legislative control. and any value which is reflected or produced by a given rate does not become a vested interest. It is an interest which they are permitted to enjoy so long as that regulation exists, but it can not be a limitation on the power to regulate or be made the basis of future regulation.

Senator POINDEXTER. It seems to me your argument rather demonstrates what you said a moment ago as to the power of the legislature to fix a return to these properties during governmental control notwithstanding the fact that they have a right to go into the courts to have the value of the property ascertained.

Mr. PLUMB. If we recognized the right as a vested property right to continue for 1 year, or 2 years, or 10 years, or forever, to enjoy the revenues which existing rates produced, then there might be the basis for your suggestion, but if we take the position that the rates now charged are subject to legislative control and that they can at all times be fixed so as to produce a reasonable return, then there is no vested property right in present revenues, if they be excessive, and the investment basis can not be determined on the rate of return which the exercise of their privilege produces when applied to investment.

Senator CUMMINS. Is this what you mean? Take a given railroad in the year of its operation. The rate that it enjoys enables it to pay 10 per cent on its investment, or any other value which may be attached to it. It is about to sell its railroad, and the question is: What is it worth? And just at that time the Government changes the rate and reduces it so that it will only pay 5 per cent on the investment. Do you mean that the value of that property would be very materially affected by the change in the rate which the Government had a right to make?

Mr. PLUMB. It undoubtedly would be because in the sale of one railroad corporation to another, that is merely a transfer of the private interest which the Government has granted the first corporation to a second corporation, and any agreement which may be made within those two private parties as to the value of the private interest can not at any time restrict or limit the power of regulation which the Government reserved when it made its grant to this corporation.

Senator GORE. Can you suggest some court decisions which sustain the decision you make?

Mr. PLUMB. You mean in rate making?

Senator GORE. Yes; in reference to rates on properties dedicated to public use when taken over by the Government and operated by the Government, private property taken for public use?

Mr. PLUMB. I do not know of any cases where property has been taken over by the Government for public use which involve the rate-making power. There are many cases where the Government has condemned private property for public use, but that is not a situation which could arise if the Government were taking over railroads, because railroads are now devoted to a public use, and that public use could be no greater when the Government reassumed the function of operating and owning these railroads than it is under private ownership and operation. The only thing that the Government would acquire or could take back would be the private interest which it had granted to these corporations in property devoted to a public function.

Senator GORE. Then the question would be as to whether or not the compensation fixed by the Government was confiscatory, would it not?

Mr. PLUMB. And that would be a judicial question which must be subject to judicial review, and I have so provided in the amendment which I suggest.

That brings me back to the point that I said I wanted to comment on.

Senator CUMMINS. Take a separate case. We have fixed the price of wheat for the present year at \$2 a bushel, substantially, reserving,

of course, the right to fix it for any other year at any price we may think it ought to bear. If a wheat farmer was selling his farm it could hardly be assumed that the value of the farm could be determined by wheat at \$2 a bushel.

Mr. PLUMB. Not unless the purchaser was very credulous.

The CHAIRMAN. Mr. Plumb, I want to get this clear in my mind. Your contention is that under the power of the Government the railroad is entitled to a reasonable return in serving the public upon the legitimate capital investment for the construction of the vehicle of that service. Now, if upon the investigation provided in your amendment the total investment is such as to show that the return received is not reasonable, it is too large, that there is no vested right in the company to that return under the term "a reasonable return"—

Mr. PLUMB. None whatever.

The CHAIRMAN. And therefore the fixing of a reasonable return upon the capital thus ascertained would be a legislative function under the very terms of the charter?

Mr. PLUMB. Certainly. That is the right which was preserved when the grant was made, and is a restriction under which all property has been acquired and all interests exercised.

The CHAIRMAN. I want one step further. Therefore the value of the property of the carrier is not affected legitimately—I will use the term, "legitimately affected"—by the ascertainment of what would be a reasonable return when the return that has been given heretofore was bound to be unreasonable?

Mr. PLUMB. No.

Senator KELLOGG. Under your first section here, do I understand you to claim that Congress can absolutely fix the rate of income on a railroad investment?

Mr. PLUMB. So long as in fixing that rate it allows a reasonable return. Whether or not the action of Congress is justifiable is a judicial question.

Senator KELLOGG. Very well. Then the amount of that rate of interest is a judicial question and not a legislative one?

Mr. PLUMB. Yes.

Senator KELLOGG. So that we can not fix that indefinitely ourselves?

Mr. PLUMB. You can fix it always as you do in rate making but subject to the judicial review.

Senator KELLOGG. Then I understand that. Now, your plan is to give the railroads this guaranty as a temporary war expedient, subject to review by the courts?

Mr. PLUMB. Yes, sir.

Senator KELLOGG. And they must file their petitions before July 1, 1918, as soon as the total amount of money upon which such corporation is entitled to receive such return under the provisions of its charter are to be determined?

Mr. PLUMB. Yes, sir.

Senator KELLOGG. What are the elements which the commission would take under consideration in fixing the amount of the investment?

Mr. PLUMB. Well, I would presume that the commission, having power under this bill to prescribe the form of the petition and the

procedure, would ask the petitioner to set out in its petition all of its claim as to value, and then it must assert the legislative grant upon which that claim is based. The commission would then pass upon the evidence tending to support the amount of value which was ascribed to that claim, and would determine whether or not the legislative grant asserted as the basis of the claim included any property right that could be so valued.

Senator KELLOGG. Now, here is a railroad, we will say, that was authorized to build a road between various States, to acquire property, to operate the road, and it comes before the commission and claims its property is worth, and the investment is, \$1,000,000.

Mr. PLUMB. Yes.

Senator KELLOGG. What elements are the commission to take into consideration in determining what the value of that is? Is it to take the value of the physical property, the investment, or what it will earn, or what?

Mr. PLUMB. Now, Senator, I am just coming to a discussion of the universal charter provision. Of course, charters vary greatly and vary between different States, but there are certain general principles which are common to all charters in all States, and I think that when I have an opportunity to discuss those general principles, I can show you that investment, actual money devoted to the service of the public, is the only thing that can be taken into consideration in fixing the carriers' interest in the property. If there be exceptions to that general rule, they must be based on exceptional grants, and if there be such grant, there is no legislative action that can deprive the owner of such a grant of that property interest. It must be taken into account in determining what that particular corporation is entitled to receive as compensation for its property.

Senator UNDERWOOD. Let me ask you this question right there. I concede, when you come down to property values, that a rate, for instance, would not be confiscatory if it granted a reasonable return on actual value. I think that is the position you take.

Mr. PLUMB. What do you mean by actual value? Investment or market value?

Senator UNDERWOOD. Well, for the purpose of my question it would not make any material difference. What I was coming to was this. Of course, it might from one angle be actual value, present-day value, from another angle it might be investment value, but you seem to limit in your statement the question of whether a rate is confiscatory, and under this amendment of yours it seems to me that you intend that we fix a rate on which the basis of value should be, that it must not be confiscatory.

Mr. PLUMB. That is open to judicial construction just as the establishment of the rate.

Senator UNDERWOOD. Still if we do fix a confiscatory rate, you concede the courts would reverse our finding?

Mr. PLUMB. Oh, certainly.

Senator UNDERWOOD. But if it is not confiscatory, but in that domain in which the mind of Congress can operate, and the courts would sustain it?

Mr. PLUMB. Certainly.

Senator UNDERWOOD. That comes down to the value of property, but there may be other values embraced, and this is what I want to ask you. In some of these charters there may be charter rights that are of value, vested rights, in some of them they may not be vested. Is this amendment of yours broad enough to include within the domain of the court the determination of the value of vested rights if they are vested?

Mr. PLUMB. It was my intention and it was my understanding that when we find the total amount of money upon which the corporation is entitled to earn a return under its charter, that includes every provision in that charter which is susceptible of proof as having value.

Senator UNDERWOOD. Do you think this amendment is broad enough to cover that?

Mr. PLUMB. It is, in my opinion, and any legislation which is not broad enough to cover that, that the application of a corporation whose charter was broader than the legislature permitted would be held unconstitutional.

Senator UNDERWOOD. That is my view of it. That is the reason I asked you the question.

Mr. PLUMB. This proposed amendment does not purport to confer any rights upon the carriers in excess of those already expressly conferred by law, neither does it purport to deprive them of any right, interest, or privilege which has already vested under the law, but permits each and every carrier to assert before the tribunal provided for that purpose all of its rights, privileges, and franchises which it claims, and the value thereof, which can be sustained by competent evidence. This amendment preserves to every carrier all values of property, interests in property, rights, or privileges which have been conferred upon it by its charter or the laws under which it operates, and therefore is in full accord with the Constitution. If this proposed amendment should cause any embarrassment whatsoever to the carriers, such embarrassment would arise only because the carriers might be unable to point to the grant that would sustain their extraordinary claims to all elements of value which appertain to their properties, and failing to find a grant to sustain their claim, it might, and undoubtedly would, be held that although the values existed as proven by the evidence submitted, still, lacking a grant to convert such values into private interest, it must follow that the values so proven and not granted were inherent in the public interest which had been retained in these public highways.

If this proposed amendment should meet with your approval and it should be written into the legislation to be enacted by Congress, then the extent of the corporate interest in every system of transportation taken over by the Government must be determined and defined by the terms of the charter under which that property is now held and operated.

Of course, the term "charter" includes not only the certificate of incorporation, if the corporation be organized under general laws, and the act of incorporation, if it be organized under a special grant of the legislature, but also all laws relating to the ownership of said property and the exercise of the privileges conferred, including all limitations imposed by the constitution under which the corporation is created or exercises its functions.

With but two or three exceptions, all corporations now operating railroads are created under State charters, and the limitations imposed upon the extent of the privileges granted are to be found in State constitutions and State enactments.

It will immediately occur to you that these charters will not be uniform; that special charters will contain provisions different from those imposed by general laws; and that the laws of the various States differ one from the other; that some States have granted extremely liberal charters, others have made very limited grants. This is undoubtedly true, but it is also true that a company given broad powers by the State which created it is just as much bound by the limitations of another State within which it operates as would be the creature of that other State, and that a corporation which was given its existence by a State imposing strict limitations carries those limitations with it wherever it goes for the exercise of the functions conferred upon it. For instance, a railroad corporation turned loose by the State of New Jersey under the old régime, with the broadest possible powers conferred by its charter, when it enters the State of Illinois and there operates a railroad subjects itself to all of the limitations imposed upon railroad corporations by the State of Illinois through its constitution and statutes. A corporation like the Southern Pacific, created under the strict limitations of the Kentucky constitution and carrying on its business wholly without the State of Kentucky, carries those limitations with it wherever it goes and can not exercise in a State which grants greater freedom to its corporations any powers which the State of Kentucky has denied to it when it was created.

Quite naturally you will ask, "What has the Federal Government to do with these State corporations and State-imposed limitations?" The answer is perfectly obvious. Originally all sovereign power resided in the States as separate Commonwealths. By the adoption of the Federal Constitution these separate Commonwealths conferred upon the Federal Government all of their sovereign power relating to the interstate commerce and the establishment of post roads. Under the delegation of the States' sovereign powers the Federal Government undoubtedly could have required corporations engaged in interstate commerce to be organized under a Federal incorporation act, but up to the present time the Federal Government has not so exercised this sovereign power, but has permitted corporations organized under State governments to occupy the entire field of interstate transportation. The limitations which the State has imposed upon railroad corporations have been imposed for the benefit of the inhabitants of that State and the public generally, wherever that corporation transacted its business. In the Federal regulation of these creatures of the various States the United States Government is authorized by the State to exert all of the State's power over such corporations. This includes the power of the States to insist upon the full observance of the limitations which they have imposed upon railroad corporations. The Federal Government undoubtedly might have conferred upon interstate carriers broader powers than those conferred by the States, but it has not done so. Federal legislation has been restrictive and in many instances has imposed upon interstate carriers burdens and obligations in excess of those imposed by

their State charters, but in no instance has the Federal Government by legislative enactment attempted to grant to such corporations any powers in excess of those conferred by their charters. The Federal Government therefore stands in the same position in its relation to these corporations that the States would stand in had they not delegated their sovereign power over interstate commerce to the Federal Government.

The Federal Government has full power to enforce all charter limitations imposed by the States upon railroad corporations, and in so far as the Federal Government fails to regard these limitations it must fail in protecting the public interest by the proper exercise of the sovereign power which the States have delegated to it in the matter of interstate carriers. The Federal Constitution does not confer any rights upon such corporations whatsoever, but merely guarantees the protection of rights which the various States have conferred upon these corporations, and obviously the Federal Constitution just as much guarantees the protection of the public rights which the States have retained in the public highways in which they have granted private interests.

Although there is a wide variation existing between charters granted under special acts and those granted under the general incorporation laws of the various States, still there are some general principles which are common to all charters and which must obtain unless there be a special exception made in special charters granted in a few individual cases.

I wish to call your attention to some common-law, constitutional and statutory, limitations upon the right or privilege of issuing stocks and bonds.

Corporations, being created by statutes, do not derive any interests in property from the common law; such interests must be based solely on legislative grants. The common law, however, has imposed many limitations upon the powers of corporations, limitations which the experience of mankind under the English system of Government has found necessary to preserve public rights against the encroachment of granted privilege. Among these limitations so imposed by the common law is the principle recognized by all writers on the common law and clearly stated by the Supreme Court of Alabama in *Commercial Fire Insurance Company v. Board* (99 Ala., 1, p. 4) :

Capital stock is the sum fixed by the corporate charter as the amount paid in, or to be paid in, by the stockholders for the prosecution of the business of the corporation and for the benefit of corporate creditors. The capital stock is to be clearly distinguished from the amount of property possessed by the corporation. * * *

At common law the capital stock does not vary but remains fixed, although the actual property of the corporation may fluctuate widely in value and may be diminished by losses or increased gains * * * [p. 7]. When we speak of capital stock of a corporation we are understood to refer to the sum subscribed in its organization. When we speak of stock we mean the certificates issued by the corporation to the shareholders, which certificates, like titles to property, furnish the evidence of ownership of the shares of stock. Capital stock is the aggregate of money or other valuable things contributed or paid into the common treasury as condition of the exercise of corporate functions and a security for their faithful and prudent exercise. It is the property of the corporation, charged with a trust, it is true, but, nevertheless, in its possession and control.

This common-law requirement that the amount invested in the exercise of the corporate franchise should be the exact equivalent of the par value of the corporate securities issued was, in the early years of railroad history, modified to some extent by the different State legislatures. The abuse resulting from the legislative privileges so granted became so scandalous that, beginning with Illinois in 1870, the people of the various States, through their constitutions, restored this old common-law limitation to its former vigor and effect and at the same time deprived the legislature of any power in the future to in any way abate this requirement.

Railroad history began about the year 1830. This common-law limitation upon the privilege of issuing stocks and bonds was then fully recognized.

Railroad builders, recognizing this limitation and faced with the difficulty of financing their promotions if held to this strict letter of the law, began to include in the charters, which at that time were directly granted by legislative enactment, provisions authorizing them to issue their stocks and bonds for a consideration less than par. In many instances these charters specifically provided that such securities might be issued for any price the directors saw fit to accept, and that when so issued they should have the same validity as though issued at par. The legislative authority so conferred upon these corporations was in abrogation of the common law and undoubtedly made legal the issuance of what would otherwise have been fictitious securities.

At the close of the Civil War, although we were then in the early stages of railroad development, there had been many scandalous emissions of watered securities which called forth a tremendous popular protest. At that time the railroads claimed that they had a right to earn a reasonable return upon the par value of the securities so issued. Many of the States faced this problem in the constitutional conventions called to frame new constitutions. Illinois, in 1870, adopted its present constitution, in which it embodied the following provision:

No railroad corporation shall issue its stock or bonds except for money, labor, or property actually received and applied to the purposes for which such corporation was created. Any stock, dividend, or other fictitious increase of capital stock or indebtedness shall be void.

That has been in the constitution of the State of Illinois since 1870. It was never invoked to protect the public interests until four years ago. I will come to that decision a moment later.

The right asserted by the railroads at that time was that they had conferred upon them by their charters the right or privilege of charging such toll as would afford them a reasonable return upon the par value of the securities which they had issued. In the constitutional debates this assertion of right was met by the declaration that in order to prevent unjust taxation the people would provide in their constitution that the issuance of securities must exactly correspond with the actual investment made, in order that the returns received by the holders of such securities might be accurately known to the public in order that the power of regulation might be intelligently exercised. At that time no railroad company had ever asserted that it was entitled to receive a return upon the value of its property.

In the Illinois constitutional debates, Judge Elliott Anthony, in discussing the proposed adoption of the provision limiting the issuance of securities, said:

I wish to explain for a moment where the evils come into the community from the increase of the capital stock. The managers care nothing about the public but in order to keep up the stock they raise the rates of freight in order to declare dividends upon the watered stock. It is a fact well known that at the moment these managers, who care nothing for the public, get control of a railroad and its earnings they use them for the purpose of making money at stock manipulating. Rates are increased largely, by which they seek to make their watered stock pay dividends and keep it up in the market, and the injury to the public is very great.

Shortly thereafter, Pennsylvania incorporated a like provision in its new constitution, and Mr. Howard, in addressing the convention in the debates on this provision, said:

But hereafter it should be known that the stock will not be allowed to be increased without limit. We should know that the stock is to be used for a legitimate and a valuable purpose; that it is to build railroads; that the issue of stock is necessary to build them; and that it is not the intention to water the stock or increase it unnecessarily. After this stock is increased it must be made to earn dividends, it must make its proper interest, and the people of the Commonwealth must be taxed in the price of transportation for the purpose of raising money to pay dividends on that stock, and therefore it is the right of the people to know that those issues of stock are necessary and that the proceeds are to be used for legitimate and proper improvements.

In the Kentucky Constitutional Debates, in discussing a like provision, Mr. Clardy said:

Now, it is a fact that a great many corporations in this State and elsewhere would show a much larger dividend, and the people would be able to see to what extent they had been imposed upon by these corporations, if it was not for the fact that the stock represents something which does not really exist and this we seek to avoid in this fifth section.

Time will not permit me to go further into this phase of the historical development of constitutional provisions. Enough has been shown to demonstrate that the people, in the adoption of these provisions, clearly intended to compel railroad companies to make the par value of the securities issued by them coincide with the amount of investment made by the subscribers to such securities, and that the corporation's right or power to tax the people by the imposition of tolls and charges should be strictly limited to such exercise of that power of delegated taxation as would procure a reasonable return upon the investment which the subscribers to such securities had made in the corporation.

This constitutional provision has been embodied in nearly every new State constitution adopted since 1870, with the exception of the States of New York and Ohio, and in Ohio similar provisions are embodied in that portion of the constitution authorizing the creation of the State utilities commission.

In many other States in which no new constitutions have since been adopted, like limitations have been established by legislative enactment. The effect of this constitutional provision was to restore to full force and vigor the former common-law limitation imposed upon all corporations, and it had the further effect in the various States which had adopted this provision of depriving the legislature of any power thereafter to remove the limitation so imposed.

The Supreme Court of Illinois, in the case of *People v. Union Consolidated Elevated Railway Co.* (263 Ill.), held that by this provision of the constitution—

The State retains the right to regulate rates charged by railroads, but it has not the power to fix tolls or charges at so low a rate as to destroy the investment or deprive the company of its right to a reasonable return on the investment.

That was a quo warranto proceeding brought by the State against the elevated railroad company, based on this contention, that they had issued securities, capital stock, and bonds to a total amount of about \$110,000,000; that the investment actually made was something less than \$50,000,000; and that, by the exercise of this power of issuing securities in excess of investment, they had violated the terms of the charter, and were therefore subject to having the charter forfeited.

I had the honor to represent the State in that proceeding.

The court in that case said:

The State retains the right to regulate rates charged by railroads, but it has not the power to fix tolls or charges at so low a rate as to destroy the investment or deprive the company of its right to a reasonable return on the investment.

Senator GORE. What is the style of that case?

Mr. PLUMB. That was the case of *People v. The Union Consolidated Elevated Railway Co.* (263 Ill.). There was a second decision in 265 Illinois, where the question of laches was raised and disposed of in favor of the State.

This constitutional declaration now exists in some 26 States, and in many of the States the same provision is preserved by legislative enactment.

No matter what statutes may have been enacted by the legislatures of the various States having such constitutional provisions, no grant could be made to the corporations which would impair or remove the limitations so imposed by the Constitution, but in my study of the statutes I have been unable to find any provision which purports to lessen this constitutional restriction.

This constitutional declaration that issues of securities of a par value in excess of the investment actually made and applied to corporate purposes should be void now prevails in some 26 States. The common law prevails in all States except Louisiana and some code States, but in Louisiana the constitution prescribes the same limitation and in many of the code States like provisions have been supplied by the legislature. In many States that have not adopted new constitutions since 1870 this limitation, as construed by the Supreme Court of Illinois, was to preserve in the State a right to regulate the use of these highways, provided that in such regulation the State did not deprive the carrier of its investment or a fair return upon the investment.

The full extent of the private interest which the legislature has granted to carriers in public highways, under such a limitation, is measured by its investment devoted to the public service, and any regulation of the use of the highway which preserves to the carrier the integrity of its investment and a fair return upon that investment secures to the corporation all of the rights which are guaranteed to it by the constitution.

Senator UNDERWOOD. What do you understand by the word "investment"; do you understand it to mean the money actually invested or the value of the property?

Mr. PLUMB. The money actually invested by the subscribers in the securities. Now, there are further limitations which I am coming to. I eliminated value. I am coming to that part of my discussion which I think shows why value must be eliminated.

Now, as bearing on the question of what constitutes investment, I must refer to another common provision in all charters, and that is the provision relating to maintenance.

All railroad charters, whether granted by State legislatures under special act or organized under general law, have this provision in common: That corporations so organized are authorized to acquire, construct, maintain, and operate a railroad. Some States, like Missouri, have added to this general authority the words "for public use."

The authority so conferred to acquire and construct imposes a corresponding obligation to acquire and construct the particular railroad defined in the charter. For a failure to so acquire and construct within a reasonable time, or within the time fixed by law, the charter would be forfeited. The franchise or operating the railroad carries with it an obligation to operate, and for a failure to operate the charter would be forfeited. The privilege or franchise of maintaining the railroad carries with it a like obligation to so maintain, and a failure to observe this obligation would undoubtedly be a cause warranting the institution of quo warranto proceedings by the State. The Supreme Court in the Knoxville Water case has defined the obligation to maintain as being an obligation to preserve the integrity of the original investment. A failure to observe this charter obligation would result in a diminution of the original investment by the extent to which the corporation had failed to preserve the integrity of such investment. The Supreme Court has repeatedly said that the total investment could not be the basis upon which the State should regulate the use of the railroad, because the investment might have been dishonestly expended, or imprudently made, and the public does not underwrite such losses.

Senator POINDEXTER. Was that your statement, or is that a quotation?

Mr. PLUMB. No, sir; I did not quote. I stated the principle.

The principle is that is shall be such funds as are actually received and applied to the purpose for which the corporation was created. If money has been dishonestly diverted from that purpose, it has not been applied to the purpose; if money was imprudently expended in effecting that purpose, it was expended on a judgment over which the State had no control, and consequently not in line with the decision.

It is only so much of the actual investment made as has been honestly and prudently applied to the purposes for which the corporation was created that furnishes the basis upon which the State shall exercise its power of regulation. I define "investment" and mean by my use of the word "investment" to include only such moneys, or moneys worth in labor or property, as has been actually applied to the purposes for which the corporation was created and has been furnished by the original subscribers to the capital stock

or the original purchasers of bonds, the integrity of which has been preserved by proper maintenance. When securities, either capital stock or bonds, have been issued by the corporation and are then placed upon the market, all subsequent dealings in such securities furnish no basis whatever for determining the amount of money which has been applied to the purposes for which the corporation was created. Such subsequent dealings are purely transactions between private individuals, and the consideration paid for the transfer of the security is a consideration between individuals, in which the State has no interest. Such subsequent transactions in no wise affect the investment which has been devoted to the purposes for which the corporation was created, and in no wise measure the amount of money which has been devoted to the public service. The State, however, is a party to the original issuance of such securities, and under all constitutions such as that of Illinois, the State has declared that any fictitious increase in capital stock or indebtedness shall be void.

So far as this provision was intended to protect the public against a fictitious inflation of securities, that intent can not be defeated by the voluntary agreement between the corporation and private individuals that they will disregard this constitutional limitation. So far as the limitation was intended to protect individuals against the purchase and sale of such spurious securities, individuals have the power to waive by their own agreement any constitutional or statutory provision intended to protect them against the wrongdoings of others, but if stockholders agree among themselves to issue and accept securities which are in whole or in part fictitious and that ultra vires act is consummated, neither the corporation nor the individuals can afterwards be heard to say that their act was unlawful and the securities so issued were void.

You are all familiar with the constitutional limitation imposed upon municipal corporations, limiting the amount of indebtedness which they may incur and declaring that anything in excess of the amount so limited shall be void. It has been held repeatedly that that provision was placed there to protect the property owners and the public against excessive taxation. The constitutional debate disclosed that the purpose of this provision inserted in the Illinois constitution was identical. It was to protect the public against excessive taxation. The courts have never hesitated to hold a municipal bond void if issued in violation of that constitutional restriction. The question has never yet arisen at the instance of the State whether or not the railroad securities so issued were void; it has arisen at the instance of the individual. When it has arisen, it has usually passed off on this contention. If brought by a stockholder to test the validity of bonds which were being foreclosed, it was found that the stockholder or his predecessor who owned the stocks had consented, and therefore he was bound by his consent and estopped from raising any question. If brought by the corporation after having issued securities, no corporation can claim that its act is invalid, because the act was ultra vires if the contract has been consummated, and the corporation is estopped to raise the question. Only the State can raise that question in protection of public rights, and no State has raised it.

In that Elevated Case those stocks had been outstanding, as it is alleged, some 16 or 18 years, and the railroads came in and objected that the State, by its laches, was now estopped to proceed in the quo warranto proceedings; that no State official had ever objected: that the corporations had made reports every year to the secretary of state; that these reports were on file, and the State must have known that these violations had occurred many years ago.

The Supreme Court said "No"; that public rights can not be lost by laches; that no public individual, even by active consent in an administrative office, can deprive the public of the inherent rights which are reserved; that nothing—lapse of time, official omissions, or even official acts of recognition—can deprive the public of the interests which are inherent. Otherwise, all the property of the public and all the rights of the public might very quickly be transferred to private holdings and we would see the end of the Republic.

In so far as their action affects the public interests, nothing that they do can prevent the State from asserting the invalidity of the securities so issued or give to the holders of such securities any advantage over the State in any right to demand a greater return than they would have had had the securities actually corresponded with the investment which they made in such securities at the time they were issued.

Another general principle that is common to all characters relates to the issuance of bonds. Railroads are authorized to borrow such sums of money as may be necessary for their corporate purposes at such rates of interest as the directors may fix. Of course, this authority would not authorize the directors to disregard any usury laws which were in force at the time of their action, so this must mean that they are authorized to fix legal rates of interest. The corporation is authorized to mortgage its property and franchise to secure "the amount so borrowed." There is no authority to issue a mortgage to secure any other or different amount than the exact amount so borrowed. If a corporation borrows a million dollars in actual money, which is devoted to its corporate purposes, and issues a mortgage to secure the payment of bonds for a million and a half, it has exercised a power which its charter has not conferred upon it, and in so far as the exercise of that ultra vires power is prejudicial to the interests of the public and in violation of the limitation which the State has prescribed the public interest must remain wholly unaffected.

Suppose a municipal corporation were to borrow a million dollars and issue bonds for a million and a half. Is it conceivable that such an issue could be held valid as against the taxpayers? Where authority is given to borrow money and issue bonds for the amount so borrowed and to secure those bonds by mortgage on the property, is it conceivable that they would be bound by a mortgage in excess of the amount so borrowed, unless there be explicit authority given by the public to so bind them?

I find no charter in which such authority is given.

Now, I come to the question of the title to property.

The provisions in all charters relating to the interest which railroad corporations may acquire in the property held by them are identical in principle though different in phraseology. The most common

provision is that such corporation shall have power to acquire all real and personal property necessary for its corporate purposes and to sell the same when no longer necessary for railroad uses. Railroads are commonly authorized to take and hold such voluntary grants of real estate and other property as may be necessary for their corporate purposes and to condemn any real estate necessary for such corporate purposes where it can not agree with the owner as to the compensation to be paid. It must be remembered that in all States railroads are either specifically declared by the constitution to be public highways or are so held by judicial decision; that the corporation is authorized to acquire real estate only for the purposes of maintaining and operating a public highway, not for any other or different purpose, and that it has but a limited power of disposition over the property which it so acquires; that is, the power of sale can be exercised only when the use to which the property is devoted has been terminated. Here is a distinct difference between the power of an individual over land which he owns and the power which the State has conferred upon railroads over the land which is acquired for railroad purposes.

The individual may sell when he pleases for such price as he may obtain and to whoever desires to purchase and may place the land to any use for which it may be adapted. Not so with the railroad. Its charter limits the use of the land which it acquires to the single purpose of being used as a public highway, and it can be put to no other use whatsoever so long as its use as a highway exists; so long as that use is in existence there is no power of disposition in the owner and no power to divert the land to any other use, no matter how profitable that other use might be, and this is necessarily so. In all land used for highway purposes in the ordinary road or street in rural districts the title is owned by the abutting landowner, but he has no power of disposition over the land to which he had title, except subject to the use. His title is held subject to the public use of the land for highway purposes. When that use is abandoned his right of reversion becomes effective, and he can then, after the abandonment of the use, sell or transfer the land and the right of possession thereof, or place it to any use whatever for which it is adapted, but so long as the right of the public to require that it shall be used exclusively for highway purposes exists his fee is a mere inactive right of reversion.

As a fee alone, disassociated from any franchise right of operation, is that fee of any value? Does the owner of that fee in land condemned have a valuable right other than the right of reversion? Must we not consider the property held in railroad highways and the property held in streets to be of the same identical nature so far as the title is concerned, differing only in the franchise which has been granted to the holder of that property—the right to operate the highway and the right to charge tolls to protect the investment and procure a return?

Senator POMERENE. The carriers claim that they are entitled to possess as their private property. May I ask whether that has been judicially determined?

Mr. PLUMB. It has been raised in a condemnation case decided by the Supreme Court, and I am just coming to that, Senator. The

carriers claimed that they are entitled to possess as their private property the value of the land which they have devoted to highway purposes for railroad uses just as an individual owner of the land encumbered by such use is entitled to the value of his land.

Let us see if this claim can stand analysis. The claim is made as to all lands which the carrier owns, regardless of the source of its title, and the carriers are possessed of many kinds of titles. A portion of their lands they occupy by reason of the exercise of the State's delegated power of eminent domain; another portion they occupy under deeds which they have purchased, but which convey to them merely the use of the land for highway purposes, railroad purposes, reserving the fee subject to such use in the grantor. Other lands have been donated to them for railway purposes; other lands they occupy by reason of a public grant of a right of way; and other lands they have purchased outright, securing from the donor a warranty deed conveying to the railroad all of the interest which he formerly held.

In such a deed the title is complete between the railroad and all other claimants to the property, but under the charter of the corporation as against the State it has acquired this land only for highway purposes, and by the purchase of the land under that power granted to it it has dedicated that land to the public use for highway purposes, and by its purchase of the land the public immediately becomes possessed of a perpetual easement to have that land so purchased used for railroad purposes.

The interest which the public holds in lands purchased by warranty deed is the same identical interest which the public holds in lands acquired by condemnation.

You have a system of highways; here and there, there is a tract of land acquired by condemnation; adjoining it a tract acquired by warranty deed, adjoining that a right-of-way deed, adjoining that the use of a street granted by a municipality, and adjoining that a grant of a right of way through public domain.

Is there any distinction to be made as to the public's right to have these various pieces of property used for the transportation of their persons and property because it is held by the railroad company under a different title?

The public's right to transportation over that highway is the same identical right from one end to the other, regardless of how the title was acquired.

Senator UNDERWOOD. As I understand you, you take the position that the public's right in this property is fixed by the charter rights of the corporation and not by the deed or conveyance?

Mr. PLUMB. Absolutely. The deed of conveyance does not confer any rights against the public. It confers rights against individuals and protects the title which is so received against all other individual claims.

Senator POINDEXTER. It confers rights in favor of the public, does it not?

Mr. PLUMB. But by its acquisition under the limitations of the charter the public's interest immediately attaches to that land when it is acquired under that charter provision.

This claim is asserted by the carriers, as I have said, as to all of its lands without any distinction as to the source of title. That being

it must apply to all titles to land if it applies to any; therefore, I warranted in making this illustration:

Let us assume that a railroad company has acquired all of its land by condemnation. The fee of such land would then remain wholly in the hands of the abutting property owners, or of the original owners, more correctly speaking. Now, it is the law of compensation that there can be but one assessment of damages when private property is taken for public use, and that assessment must include the full value of the land taken at the time of its acquisition.

Suppose in this case that we are assuming that many years after the condemnation had been completed and the property had been devoted to the public use the owners of the fee were to assert against either the railroad company or the public the right to further compensation for the use of their land on the ground that the abutting and adjoining land had greatly increased in value and that this land would be of greatly increased value if it could be devoted to the same purposes that the adjoining and abutting lands were devoted to. Would such a claim on behalf of the owner of the fee for such further compensation be considered by any court whatsoever, if they have been fully paid when the land was condemned and they received the value of the land at the time it was devoted to a public use?

Suppose, on the other hand, that the corporation operating the property for which, we will say, it had paid the original owners \$1,000,000 now asserted a right against the public to be recompensed for the use of this land on the basis of its present value, and proved at the present value of the land for purposes other than those for which a railroad was \$10,000,000. This claim would necessitate a determination of what interest the railroad had in the lands which it had acquired by condemnation. It could not, by the exercise of the State's delegated power of eminent domain, acquire a private interest in the land which was adverse to the interest of the public, for whose use the land had been obtained. For it is inconceivable that the State's power of eminent domain could be exercised by an agent of the State to acquire a private interest against the State.

The utmost that could be claimed by such an agent of the State, exercising the delegated power of the State, would be a right to recover all moneys which had been expended by such agent on behalf of the State, together with the proper interest or profit, or the agreed interest or profit on the money which it had so expended.

(1) It is clear that the accrued value in land acquired by condemnation for public use, conceding that there is an accrued value, is not a property right which the State has conferred upon the corporation through its delegation to that corporation of the power of eminent domain.

Interests in property have a given definite value, which can be ascertained, and that value inheres in interest, no matter who the individual may be who is the owner of that interest at the time the valuation is made.

Assuming that the fee of railroad property is an interest which has only a nominal value in the hands of the abutting owner or original grantor, can it be converted into a valuable interest when it is acquired by the corporation that is exercising the public easement?

Suppose this railroad company that has acquired all of its real estate by condemnation subsequently purchases from each abutting owner his fee, would the railroad company, as the assign of the abutting owner, have any greater right to recover against the public any values for that fee than the original owner would have had?

That fee becomes of value only when the public has abandoned the use for which the property was condemned, and that fee will have the same value under such circumstances in the hands of the corporation that it would have had in the hands of the abutting owner, and no more.

If the railroad company, holding only the public easement as the agent of the State, could not recover from the public the value which had accrued to the lands since this condemnation for public use, and the abutting owner could not recover additional damage from the public for the additional value which he claimed accrued to the fee, would the corporation, by joining these two estates, be in any better position than were the separate owners of the two estates before they were joined?

The railroads' interest in land acquired by condemnation is identical with its interest in land which it holds for right of way purposes only, whether acquired by deed or grant; for, when the use ceases the interest the corporation holds in the land ceases. A railroad company does not own its lands as land, but only for railroad purposes. It is not entitled to recover the value of its land as land in a condemnation proceeding, but only the damage which it suffers by reason of the diminution in its use of the land. This is the doctrine that has been held by the Supreme Court, and this is the case I said I would come to and is the only case where such property limitations were before the Supreme Court of the United States for its decision.

In 1892 the city of Chicago condemned a strip of land through a subdivision and across the right of way of the Chicago, Burlington & Quincy Railroad Co. The owners of the private property so condemned recovered the full value of the land taken. The railway company held this land by a deed and sought to prove the value of the land taken for a street upon the same evidence that was introduced in behalf of the owners of the private property. That evidence was excluded on the ground that the railroad company could only acquire land, "whether by voluntary purchase or otherwise, for railroad purposes, as defined in its charter."

The Supreme Court held—

It is manifest that the appellant is restricted in its use of the right of way over which this street is to be extended for those purposes for which such right of way is now used; the future use must be the same as the present use so long as the appellant continues to operate this railroad, unless the legislature shall permit it to change its route. The Supreme Court of Illinois therefore, held that the trial court did not err in excluding evidence as to the general salable value of the right of way included in the crossing or its general value for other uses than that to which it was applied * * *.

To what extent was the value of the company's right to use the land for railroad tracks unduly diminished by opening across it a public street? Under all the circumstances, in view of the purpose for which the railroad company obtained the land and for which the land was in fact used, and for which it was likely to be always used—which purpose is the most valuable one for the railroad company—that was the only question to be determined by the jury

In that case a verdict of \$1 was sustained as adequate compensation.

Senator GORE. What is the style of that case?

Mr. PLUMB. C., B. & Q. v. City of Chicago, 166 U. S.

Senator ROBINSON. Were you of counsel in that case?

Mr. PLUMB. Mr. John S. Miller was counsel for the City of Chicago in that case, and I was occupying the position of office boy in Mr. Miller's office at that time, though I did help some in writing the brief.

There are many cases which have held that the lands owned by railroad companies were private property, and that the corporation was to be protected in its ownership of such lands the same as individuals, but in no such case was the court's attention called to the charter limitation by which the corporation's interest in the property had been restricted to the use of the land for highway purposes.

PERSONAL PROPERTY.

Personal property is held by exactly the same limited title that the corporation can acquire in real property. Under the charter, the carrier is entitled to acquire all necessary personal property for its highway uses, and to sell the same when no longer necessary for such use. It is denied any power of sale over its personal property until it is no longer useful for the purpose for which it was acquired. It is denied the power of merchandising such property, and if so denied the power of merchandising such property, then value, excepting as reflected by the actual purchase price can in no wise affect the interest which the corporation holds in that property, so long as it is employed in the public service.

Value is defined by the carriers in the valuation proceedings as "power in exchange." In relation to money it is "the amount in dollars which a purchaser not under compulsion to buy will part with to obtain title to the property, and which the seller not under compulsion to sell will accept for it."

This definition is based upon the power of exchange. That is a power which is inherent in the individual's ownership of property, but it is a power which is denied to railroad corporations. If there is no power to exchange, then value in the sense of market value can not exist, and since market value can not exist in railroad property, because the owner is denied the power to exchange, it necessarily follows that fluctuations in market values, due to an increase in the units of labor or material, or increase in land values, can in no wise affect the interest which the corporation has in the property which it has purchased and subjected to the public use.

For some unknown reason, probably because the most obvious thing is frequently the last to occur to an ingenious mind, this question of charter limitations has not been presented in any rate case or in any valuation case heretofore, but on the few occasions when they have been presented to the Supreme Court of the United States, as in the C., B. & Q. case, to which I have referred, the Supreme Court's construction of these limitations is wholly in accord with the views which I have submitted to you, and that decision is irreconcilable with any other view or any other theory, and is directly opposed to the theory so vehemently urged by the carriers.

The first time the effect of the constitutional limitation forbidding the issuance of stocks or bonds in excess of investment was presented to a State supreme court as affecting the public interest its decision was wholly in accord with the views which I have presented to you, and it must be remembered that the Illinois Constitution was the first constitution embodying this provision.

The Supreme Court of Illinois has construed it to mean that the State's power of regulation is limited only by the investment which was made as a consideration for the original issuance of the stocks and bonds.

That construction of the constitution of Illinois must be followed by the Supreme Court of the United States unless the Supreme Court should find that that construction was in violation of a provision of the Federal Constitution, but as the provision of the State constitution is merely a limitation upon the power of the legislature to grant a corporate franchise, I do not see how it is conceivable that such a provision could be held to be in violation of any provision of the Federal Constitution, and I am willing to assert on what little professional reputation I may have that the Supreme Court of the United States when called upon will follow the Supreme Court of Illinois in the construction which that court has placed upon this provision of the Illinois Constitution.

The 25 other States which have copied the Illinois Constitution, according to the principles controlling the effect of judicial decisions, must construe this copied provision in the same manner in which it was construed by the Supreme Court of the State which first enacted it, so that the decision of the Supreme Court of Illinois I think must be considered to have a very wide and sweeping effect as a limitation on the interest which railroads can acquire in railroad property under charters granted subject to such a constitutional limitation.

I think that I have demonstrated that by this provision limiting the issuance of securities to investment, and by the limitations which railroad charters impose upon the interests which railroads can acquire in the property, which constitutes a public highway, first, that investment means thereby the actual amount of money or moneys' worth devoted to the public service, undiminished by failure to maintain the integrity of that investment, constitutes the full extent of the property interest which railroad corporations are authorized to acquire in the public highways which, under their franchises, they are permitted to operate.

That the charter limitations imposed upon this interest forbid such corporations to appropriate any accretions in value which may be found in the property if it were held in private ownership unincumbered by the public right to use it for highway purposes, and that such values, if they exist, are retained by the public as a part of the public interest in the public highway, and that such values have not been granted to private corporations as a part of the private interest which they may exercise.

The carriers, however, urge that there is a tremendous investment in their properties of moneys actually and honestly expended in the public service, not contributed by the original purchasers of securities, but invested out of earnings, and just as effectively devoted to the public service as though such funds had been furnished by the original purchasers of the securities.

Senator GORE. Have you passed from the land right-of-way proposition?

Mr. PLUMB. Yes, Senator.

Senator GORE. I wanted to ask you if you were familiar with the case of *Oklahoma v. Atchison, Topeka & Santa Fe*, in which the right of way through Oklahoma was granted through the Federal Government, I think, to the Santa Fe, and the Attorney General brought suit on the ground that the railroads did not have the right to count the value of the property, the right of way, as a basis for the making of rates. Are you familiar with that case?

Mr. PLUMB. I am not, Senator. How recent is it?

Senator GORE. I think about five or six years ago. I have forgotten the report it is in. Anyway, the State lost the case, and I wanted to call it to your attention so you might look into it. I would like to have your view about it.

Mr. PLUMB. I wonder if the charter limitations were construed in that case?

Senator GORE. I am not familiar with the point on which the case went off. I thought perhaps you were.

Mr. PLUMB. No.

Senator TOWNSEND. There is another question that has occurred to me in your most intensely interesting discussion. While you are discussing the value of right of way, as I understand it, all the railroad owns in that is the use for railroad purposes. In our various tax laws, where we have State laws where we have ad valorem taxes, I think the general rule is to value that right of way, their land, according to adjacent property, and they are taxed upon it as though they owned it in fee. Am I correct about that?

Mr. PLUMB. Undoubtedly. In many States that is the rule.

Senator TOWNSEND. Would it require any legal harmonizing of that situation?

Mr. PLUMB. None whatever, because the taxing of property does not vest any title, or any interest in the property. It is the exercise of the State power of taxation to raise revenues.

The CHAIRMAN. Mr. Plumb, I do not want to cut off the discussion, but we have had a rule of adjourning at 12 o'clock. The Senate is not in session to-day, and we do not want to limit this very interesting discussion of yours, but we would like to know within what length of time you would like to take a recess?

Mr. PLUMB. Mr. Chairman, I think, including such questions as you may ask, I would finish within 15 or 20 minutes. I have three pages more of manuscript. I imagine there will be some questions. But I want to tell you that the discussion I have had this morning is not the most important part of what I want to present to you.

The CHAIRMAN. Then we will take a recess until 2 o'clock.

(Whereupon, at 12.20 o'clock p. m., the committee took a recess until 2 o'clock p. m.)

The committee convened at 2 o'clock p. m., pursuant to the taking of recess, Senator Robinson acting chairman.

Acting Chairman ROBINSON. Senator Smith has been called away for a while, and has asked that the hearings proceed. So the committee will please come to order.

Mr. Plumb, you may proceed.

STATEMENT OF MR. GLEN E. PLUMB—Continued.

Senator TOWNSEND. You had not quite finished with a question that I asked you, or I had not quite finished. I wanted to get it clear in my mind. You say, of course, taxation does not give title; but this is something that I would like an expression upon from you. If the State treats the right of way—the real estate—as property of the railroad for taxation purposes, how are we going to reconcile the fact that it denies the railroad the right to treat that as property for the imposition of rates?

Mr. PLUMB. I take it that the State, in the exercise of its taxing power, is not interested in the definition of property, but is interested in the value which inures to the holder of that property under the then conditions, and it is the value which the railroad company is receiving from its ownership of that property that is being taxed. It is not a definition of the interest, but it is the definition of the value which the possessor at that time enjoys.

Senator TOWNSEND. How does the railroad enjoy any more benefit from that property worth \$1,000 an acre than it did when it was originally taken at \$100 an acre?

Mr. PLUMB. Please repeat that question.

Senator TOWNSEND. Suppose the State authorities, in evaluating the property, find that its right of way in a certain section is worth \$1,000 an acre now, as occupied, but when it was taken by the railroad it was taken at \$100 an acre. How has the fact that it has increased in value, measured by additions in property, enhanced the value to the railroad?

Mr. PLUMB. It has not advanced in the slightest iota. The value of adjoining or adjacent property can have no influence whatever on the value of property devoted to railway uses; and if the State has assessed a tax against a railroad company on any basis, I do not care what it is, the State at the same time permits that railroad to include the tax so assessed as a part of its operating expenses, which must, in turn, be met by the power of taxation which the State has delegated to the corporation.

Senator TOWNSEND. I agree with you on that, and I have followed you very carefully on this; but, inasmuch as both of these values are fixed by the State, one for taxation purposes and another for right-of-way purposes, I can not quite understand how their action can be harmonized.

Mr. PLUMB. It does not present any difficulties to me, because the tax assessed by the State against the corporation on any basis, the State permits that corporation to again assess in taxes against the people who use transportation, so that the corporation's interest in its property is in no wise affected by the basis upon which the State taxes it, differentiating railroads from other payers of taxes.

Senator GORE. Let me interject there, Mr. Plumb. There is a very able discussion, Senator Townsend, in a hearing before this committee by John R. Commons, in which he undertook to demonstrate that the basis of rates and basis of taxation were essentially different.

Mr. PLUMB. I was just taking up the claim of the railroads to have allowed them as their property the funds which they have invested in

railroads which were produced by earnings and their claim that the funds so invested were just as much devoted to the public service as though such funds had been furnished by the original purchasers of securities.

The carrier further claims that the earnings so diverted from dividends and investments were in fact the property of the stockholders and might have been declared as dividends during all the years that they have been returned to the property. That it makes no difference to the public if a road earning a 10 per cent dividend on its investment should declare that 10 per cent dividend to its stockholders and they should then reinvest 5 per cent of the dividend so declared in the property or whether the corporation itself invests 5 per cent and declares a dividend of but 5 per cent. The effect to the public is the same. Consequently, the effect on the stockholders interested should be the same.

I take it that that is the basis of their contention that this money reinvested belongs to the stockholders.

Again, we must look to the charter to see if there is any provision therein or any grant whereby the money so diverted can be used to increase the amount of stock or the amount of bonds outstanding or can be used as a basis for increasing the rate of return which shall be allowed to the owners of such stocks, or of such bonds.

Referring again to the constitutional limitation, which is but a restatement of the common law limitation, we find the provision that any stock dividend or other fictitious increased capital stock or indebtedness shall be void.

This language prohibits a stock dividend and prohibits the issuance of stock to anyone who has not subscribed and paid for it.

By no method of conjuring could such an investment out of earnings increase the indebtedness of the corporation to its bondholders, nor can it increase the investment which any stockholder has devoted to the public service, nor can it be transmuted into an indebtedness. The corporation itself expended these moneys on the improvement of its property. There is no provision in any charter which I have studied which permits the corporation to issue stock or bonds to itself by reason of such an investment. An investment so made by reason of the amount of money required to preserve the integrity of the original investment must be considered as an expenditure made by the corporation for the purpose of increasing the security of the investment made by its stockholders, or increasing the credit upon which the corporation could secure additional funds by the issuance of bonds as a means of acquiring more money for actual investment by the security holders.

Such expenditures undoubtedly increase the earning power of the corporation, but the corporation has not by reason of such expenditures had conferred upon it any authority to increase its taxing power as against the public. The power to tax the public which the State has delegated to the corporation is limited to such an exercise of that taxing power as will protect the original investment and provide a reasonable return thereon.

It may not be exercised to increase the original investment, thereby increasing the delegated power of taxation.

If the right to charge tolls and fares is indeed a delegated power of taxation, and it has always been so defined, then it must be a basic principle of government that the Government can not delegate that which can be exercised only for the support of the Government for the purpose of creating a private property. That would be an unwarranted use of a delegated governmental function and it can no more be exercised by the agent who holds that delegated power than it could be exercised by the Government in the first place before it made the delegation. The bill now under consideration by this committee is a war measure.

Senator WATSON. Will you pardon me just a moment? I was unfortunately detained this morning. Your theory is then that the railroad corporation as such has really no title to the right of way. Is that your theory?

Mr. PLUMB. No, Senator; that is not my theory. My theory is that the railroad company, as against all of the world claiming that land, has, if it buys by warranty deed, exclusive, complete proprietary title, but as against the State, it is procuring that land solely for the purpose of constituting a public highway.

Senator WATSON. By reason of a franchise?

Mr. PLUMB. By reason of a franchise.

Senator WATSON. I get your view now.

Mr. PLUMB. And that the interest which the carrier has against the State must be defined by its charter and nowhere else.

The bill now under consideration by this committee is a war measure, an emergency matter required by the exigencies which the war has forced upon the American people. In this emergency there is no time to have determined all of the questions of law and equity which must be ascertained before the rights of each and all of the corporations can be properly adjusted, and some means must be provided that will take the place of the usual orderly legal procedure for determining such rights.

If the conditions created by this act were to last only through the emergency and old conditions could be restored as soon as the emergency had passed, it might not be necessary to determine the rights of either the corporations or the public in these public highways for the purpose of administering this emergency. But we all realize that this is really a transition period. The bill itself does not pretend to say how long it shall be in force, whether it shall cease with the termination of the war or whether it shall extend over into that unknown future which portends Government ownership.

Since the bill is indefinite in this regard, it does become essential to have ultimately determined the relative rights of private and public interests in the public highways. And to that end we have offered the proposed amendment. It serves the purpose of providing a temporary relief during the existing emergency, just as asked by the President. It also serves the purpose of having the full rights of the corporations and of the public in each system of transportation taken over for Government operation finally and fully determined, just as though the emergency had not arisen.

In such determination we would preserve to every corporation all of the rights protected by the constitution, at the same time such final determination protects the public interest against any permanent invasion or encroachment.

It fully protects the public interest against any loss or diminution by reason of any claim that might subsequently be made that the carrier's right to the full net earnings of its property and to the value of the use of its property have obtained legislative recognition by the passage of this bill.

Anything more than this amendment grants to the carriers would be unjust to the public. Anything less than the protection thereby provided to the carriers would be unjust to the private interests.

The amendment we believe provides justice and equity for all.

I am asked to say on behalf of the four brotherhoods that they are in favor of retaining section 13 just as written in the bill. They believe that in this emergency we must provide for the existing conditions; we can not say how long the emergency will last; the exigencies requiring the President's action, while not brought on by the war, were not coincident with the beginning of the war; and we can not assume that the end of this exigency will be coincident with the end of the war. Consequently, it appears to us to be advisable to leave that question wholly in the hands of Congress. We can not foresee what wisdom will be required for next year's situation, or the year following. If this Congress had been hampered by any previous legislation enacted two or three years ago which provided that the Government should not take over the operation of these railroads until a fixed time, you would be greatly embarrassed in this present situation.

Senator UNDERWOOD. You do not think any other Congress could have put that limitation on this one, do you?

Mr. PLUMB. I do not think that this Congress ought to attempt to put any limitation on any of its successors.

Senator UNDERWOOD. You do not think that it could, do you? You do not think we have power to limit the legislation of some future Congress, do you?

Mr. PLUMB. As a lawyer and as a citizen. I am confident that you have not such a power.

Senator UNDERWOOD. That we have not.

Mr. PLUMB. But, if you make a contract with a corporation under legislation authorizing that contract to be made for a term of years that contract does bind your succeeding legislative body.

Senator UNDERWOOD. Undoubtedly so, if there is a vested right. If vested rights accrue, of course we could not change it, but we can not prevent any other Congress from legislating as it pleases. You favor the indefinite determination of this leasehold that is provided in this bill, with your amendment adopted. Suppose your amendment is not adopted and the original bill is adopted. Do you think it ought to go on indefinitely then?

Mr. PLUMB. No, sir. If the original bill is adopted without the amendment which I have suggested, I have supreme confidence that the Congress will insert a saving clause before it passes the bill providing that nothing in this bill contained shall ever be construed as a definition of public or private rights, or as a precedent upon which such rights shall be determined.

Senator UNDERWOOD. But if it does not, you do not think that an indefinite tenure should exist in this bill, do you?

Mr. PLUMB. If you passed this bill just as it stands, with an indefinite tenure, we would stand it for one year, and the next Congress

would very soon remedy that defect. I would rather trust to the next Congress remedying a defect in this bill than to have a limitation imposed by this Congress upon a succeeding Congress when new conditions might have arisen.

Senator UNDERWOOD. As I said a while ago, and you agreed with me, we can not put a limitation upon the next Congress to legislate in reference to this proposition outside of where vested rights may be fixed.

Mr. PLUMB. If you do put a term in section 13 and leave section 1 just as it is now worded, then you have authorized the making of a contract with these corporations for the term fixed in the bill on the conditions prescribed in section 1.

Senator UNDERWOOD. But it is limited to that term.

Mr. PLUMB. It is limited to that term.

Senator UNDERWOOD. And does not go further.

Mr. PLUMB. And does not go further.

Senator ROBINSON. But you could not repeal it or modify it before the expiration of the term, because rights would have accrued under the contract.

Mr. PLUMB. No; that would be a condition which could not be corrected until that term expired, and therefore it seems to me dangerous in the extreme to permit this exigency measure to be turned over into a contract.

Senator UNDERWOOD. I am not disagreeing with you at all about having necessary provisions put in this enactment to see that we are not tied up in this legislation by the accruing of any vested rights to anybody. I do not disagree with you about that part of it at all and your amendment on that score. I have a very curious idea, however, that all of this war legislation should be limited to the war.

Mr. PLUMB. Well, if human foresight could tell when the war would end and how soon after the termination of the war the exigencies which that war has created might come to an end, and this Congress were endowed with that human foresight, it might be well to exercise that wisdom and put in the period. But I do not believe that Congress can claim such superhuman vision, and without being possessed of that omnipotence, it seems to me it would be wise to take things as they come and let the evil of each day suffice for that day.

Senator UNDERWOOD. You may be right on that score. The only difference is this: That I feel, at least my present view is, of course, subject to change after I discuss it with my colleagues who may be wiser than I am, but my present view of the situation is this, and I would like to hear what you have to say on it: That if we pass legislation now and leave an indefinite term after the end of the war, why the status of the railroad corporations and the Government is fixed in this legislation, which must be crude, because it has got to be hasty, and we have not really determined any vital questions, and yet we have got this piece of legislation that is on the statute books, and the power of Congress itself to act is limited. It is very much more difficult for Congress to pass a piece of legislation when it has got a status that may be satisfactory to someone than when it does not have. In the next place, the legislative powers of the Government that control this situation will be to a large extent surrendered, because if any Executive—I am not speaking about the

next Executive, this may carry us into another administration—but if any Executive desires to hold the status guaranteed by this bill, it takes two-thirds of Congress to change it.

On the other hand, suppose we in this bill have given the railroads a very big bonus—I do not say we will, but suppose we do—and entrench them in a very advantageous position, why, then we have got all that natural influence to combat our changing the status, whereas if at the end of this term the Congress still has power to legislate, that brings this temporary status to a close, and we go at it with free hands.

Mr. PLUMB. Let me ask you, Senator, does it take two-thirds of the House to enact this law?

Senator UNDERWOOD. No; it takes two-thirds to pass it if a President should veto the bill.

Mr. PLUMB. Now, there being two parties in interest, if the legislation is satisfactory to one it is a fair inference it will be unsatisfactory to the other. If you are going to tie the hands of Congress at all by this legislation, as your questions have suggested, it would seem to me infinitely wiser to leave the Congress to terminate that tying up rather than to tie them up for a definite time.

Senator UNDERWOOD. But I think you take the wrong end of the case. What you state I think is true. It would be better to leave Congress with its hands untied, but from my viewpoint you are doing just exactly what you say is unwise. You are tying the hands of Congress by leaving this legislation without any definite termination. Now, if it were matured legislation I would agree with you, but I do not think anybody contends that it is matured legislation for the ultimate handling of the railroad question. It is merely a temporary bill.

Mr. PLUMB. And for that reason I have offered the amendment to sections 1 and 2, so if this is not matured legislation now it affords the method and tribunal for effectually determining finally and for all time the extent of the private and the public interests without in any way at this time embarrassing the Government in the exigencies of the situation.

Senator UNDERWOOD. I realize that, and I realize your purpose. Your purpose is to determine one phase of this question on a permanent basis, and you leave all the other phases of the question on an experimental basis?

Mr. PLUMB. No; there is no phase of the question that will not be definitely determined under my amendment, because it covers all phases.

Senator UNDERWOOD. It covers all phases of the value of this property?

Mr. PLUMB. Yes.

Senator UNDERWOOD. The basis of taking it over?

Mr. PLUMB. Yes, sir.

Senator UNDERWOOD. But it does not cover any of the phases of operation: it does not cover those phases of rate fixing; it does not cover any of the phases of the relation of labor to the property in the hands of the Government. There are a number of questions in the bill that are not permanently determined. My idea is that you seek—and I am rather inclined to think very properly—to have a definite

determination of the value question, but to my mind you do not determine the other questions at all.

Mr. PLUMB. The other questions, Senator, are not legislative. The questions of property interest and return are of a combined legislative and judicial nature. Questions relating to operation are neither judicial nor legislative.

Senator UNDERWOOD. But they are legislative because if the Government is to control these railroads it has got to provide the machinery some way, and in this way it leaves it to the President.

Mr. PLUMB. But the actual questions of operation are administrative.

Senator UNDERWOOD. Yes; but they have got to be fixed by law. The other proposition is the rate question. That is purely a legislative question.

Mr. PLUMB. That is purely legislative.

Senator UNDERWOOD. That is not in any way determined definitely by your amendment.

Mr. PLUMB. Absolutely.

Senator UNDERWOOD. How?

Mr. PLUMB. Because if the total amount of money upon which the corporation is entitled to a fair rate of return is determined, there is your basis for rate making.

Senator UNDERWOOD. Your basis is there, but that does not determine who shall determine it.

Mr. PLUMB. Who shall determine the rate?

Senator UNDERWOOD. The Director General the other day stated before the committee that if we passed this bill as at present that the power to fix the rates rested in his hands as the representative of the President. There may be some people who contend that this does not take away the power of a State commission to fix rates. It has left the question of who is to administer the rate-making power entirely indefinite.

Mr. PLUMB. Of course, I am not informed as to the Director General's attitude of mind. I have not advised with him on that, but my suggestion would be—

Senator UNDERWOOD. I am only stating what he said before the committee.

Mr. PLUMB (continuing). That if the Director General is taking over to-day all the functions which the corporations have heretofore exercised, amongst such functions is not the function of rate making. That is a legislative function. Of course, railroads are permitted to exercise the power of rate making, but always subject to legislative control.

Senator UNDERWOOD. Exactly. That is a point at issue in this bill.

Mr. PLUMB. If you are conferring upon the Director General such legislative power, I should think it should be expressly stated; and if not expressly stated, I should think there would be grave doubt as to whether such power had been conferred if in taking over the corporations the functions which he assumed were not limited strictly to those functions which the corporations themselves assumed prior to the taking over.

Senator UNDERWOOD. I see your point, and I think there is a great deal in it. The power of the Director General only carries those

wers that the corporations exercised, and not which the law exercised; but that was not the viewpoint as expressed here the other day, and, at least, it is in doubt.

Mr. PLUMB. Senator, that must be a question between the Director General and the legislative bodies. I do not consider that I am interested in the solution of that problem, nor the men that I represent. Senator UNDERWOOD. I realize that. The only point I was trying to point out to you was that the adoption of your amendment, if it is adopted, did not solve all the vital questions that are in dispute in his bill.

Mr. PLUMB. No; but it solves all questions so far as they relate to the extent of the private interests and the extent of the public interest, and that must be the basis for all rate making or for future disposition.

Senator GORE. Mr. Plumb, would not that, then, to some extent state the necessity of fixing this limitation in section 13, if you fix the basis upon which a future settlement should be made?

Mr. PLUMB. It would. There would be no necessity for providing one when this arrangement must be concluded, if, during this arrangement you are to determine the extent of the private and public interests, and then adjust compensation to the determination so made. Under such a condition Government operation might be continued if you have determined whether these roads are to be turned back to private corporations, and if so, then they should be turned back on the basis of the rights so established.

You are to take over the properties in the course of time for Government ownership, the basis is established for their taking, and I believe that no sane man contemplates the possibility of turning these properties to the old competitive ownership and operation. If they are turned back to private corporations, if, in the wisdom of the times, that is the thing to do, they must be turned back upon a basis of the private interest as it existed when they were taken, and a readjustment of conditions to the basis so determined.

Senator CUMMINS. Mr. Plumb, you make one point which is new to me, and if it is sound—and I do not say it is not—it is the complexion of this whole subject. I want to run it out a little to see whether I understand it fully. Suppose that it were the wish of the American people to continue the operation of this property that is taken over indefinitely; that is, with no indication of any time when the operation now assumed is to come to an end. Suppose, then, that as a matter of regulation of rates that 6 per cent upon the interest, whatever it may be, of the railway companies in the property is a reasonable return.

Is your contention that it is within the power of Congress to give this property indefinitely—that is, a possession that may last 50 years, or 100 years—and provide that when the interest of the railway companies is ascertained in some such way as you point out, the compensation for the use of the property shall be 6 per cent upon that interest, whatever it may be?

PLUMB. If Congress concludes that 6 per cent is the reasonable return that would be the return.

Senator CUMMINS. That is the point that has not hitherto, I think, been brought forward in these considerations. That means, then, that

determination of the value question, but to my mind you do not determine the other questions at all.

Mr. PLUMB. The other questions, Senator, are not legislative. The questions of property interest and return are of a combined legislative and judicial nature. Questions relating to operation are neither judicial nor legislative.

Senator UNDERWOOD. But they are legislative because if the Government is to control these railroads it has got to provide the machinery some way, and in this way it leaves it to the President.

Mr. PLUMB. But the actual questions of operation are administrative.

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Mr. PLUMB. That is purely legislative.

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Senator UNDERWOOD. Your basis is there, but that does not determine who shall determine it.

Mr. PLUMB. Who shall determine the rate?

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Mr. PLUMB (continuing). That if the Director General is taking over to-day all the functions which the corporations have heretofore exercised, amongst such functions is not the function of rate making. That is a legislative function. Of course, railroads are permitted to exercise the power of rate making, but always subject to legislative control.

Senator UNDERWOOD. Exactly. That is a point at issue in this bill.

Mr. PLUMB. If you are conferring upon the Director General such legislative power, I should think it should be expressly stated; and if not expressly stated, I should think there would be grave doubt as to whether such power had been conferred if in taking over the corporations the functions which he assumed were not limited strictly to those functions which the corporations themselves assumed prior to the taking over.

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Senator UNDERWOOD. I realize that. The only point I was trying to point out to you was that the adoption of your amendment, if it was adopted, did not solve all the vital questions that are in dispute in this bill.

Mr. PLUMB. No; but it solves all questions so far as they relate to the extent of the private interests and the extent of the public interests, and that must be the basis for all rate making or for future acquisition.

Senator GORE. Mr. Plumb, would not that, then, to some extent obviate the necessity of fixing this limitation in section 13, if you fix the basis upon which a future settlement should be made?

Mr. PLUMB. It would. There would be no necessity for providing a time when this arrangement must be concluded, if, during this arrangement you are to determine the extent of the private and public rights, and then adjust compensation to the determination so made.

Under such a condition Government operation might be continued until you have determined whether these roads are to be turned back to the private corporations, and if so, then they should be turned back on the basis of the rights so established.

If you are to take over the properties in the course of time for Government ownership, the basis is established for their taking, and I believe that no sane man contemplates the possibility of turning back these properties to the old competitive ownership and operation. When they are turned back to private corporations, if, in the wisdom of the times, that is the thing to do, they must be turned back upon a determination of the private interest as it existed when they were taken, and a readjustment of conditions to the basis so determined.

Senator CUMMINS. Mr. Plumb, you make one point which is entirely new to me, and if it is sound—and I do not say it is not—it changes the complexion of this whole subject. I want to run it out a little to see whether I understand it fully. Suppose that it were the policy of the American people to continue the operation of this property that is taken over indefinitely; that is, with no indication of any kind that the operation now assumed is to come to an end. Suppose, further, that as a matter of regulation of rates that 6 per cent upon the interest, whatever it may be, of the railway companies in the property is a reasonable return.

Is it your contention that it is within the power of Congress to take over this property indefinitely—that is, a possession that may last 50 years, or 100 years—and provide that when the interest of the railway companies is ascertained in some such way as you point out, that the compensation for the use of the property shall be 6 per cent per annum upon that interest, whatever it may be?

Mr. PLUMB. If Congress concludes that 6 per cent is the reasonable return, that would be the return.

Senator CUMMINS. That is the point that has not hitherto, I think, been brought forward in these consideration. That means, then, that

if the Government wanted to take possession and operate the property indefinitely that it could avoid paying to the railroad companies the value of their interest in the property. In other words, it would not be a taking of the property, but would be the taking, permanently, forever, the use of the property, and that we should determine legislatively what that return would be.

Mr. PLUMB. Subject, however, to judicial review.

Senator CUMMINS. Subject to the power that any court has to declare an act of Congress unconstitutional because it takes property without due process of law?

Mr. PLUMB. Yes.

Senator CUMMINS. That means that if the court should think 6 per cent was not sufficient, that it could declare the act unconstitutional?

Mr. PLUMB. Yes.

Senator CUMMINS. But if it is thought that was a reasonable return upon the value of the property, we have the same right to take possession indefinitely and pay at that rate that we have now to fix rates that will return interest at the rate of 6 per cent.

Mr. PLUMB. Yes, sir, Senator.

Senator CUMMINS. If that is a sound proposition of law, and I do not say it is not, it solves a great many of the troubles about Government ownership.

Mr. PLUMB. Just in conjunction with that I want to say that you are not taking private property for public use. You are reassuming the exercise of a governmental function which has been delegated and which involves this private property. If you were taking the private property of individuals, I do not say that you could have the value of that property fixed by a tribunal and then say we will pay you a return on the value so fixed. I do not think you could do that, but when the Government has said to these corporations, "We will give you our power to operate a public highway and we will permit you to invest so much money as may be necessary in the exercise of that governmental function, and we will agree that you may charge such rates as will give you a fair return on that investment," if the Government reassumes that function which it has delegated, all that it has to do to preserve all the rights which it has given to the corporation is to assure a fair return on investment, and whether that be done by rental paid by the Government or whether it be done by rates fixed by the Government is immaterial.

Senator CUMMINS. As I say, it is a new thought to me. I have always supposed heretofore that when the Government took the investment or the property, whatever may be the standard—and there is great strength in your argument as to the standard—that it would be obliged to return the investment if that is the standard. In other words, that it could not permanently take the investment or the property representing the investment, without giving back to the investors their money. Your idea is that the Government can keep the investment permanently in the use to which it was devoted and satisfy the constitutional provision by paying whatever is a reasonable return upon that investment.

Mr. PLUMB. Yes, sir. And that must necessarily be so, because the investment when once made is irrevocably made. The individual owners of that investment may pass in and out and through the

organization, but the investment made in a railroad can not be withdrawn except by governmental consent. It is there forever.

Senator POINDEXTER. Would it be in the power of Congress to enact a law providing that hereafter such rates should be charged by railroads for freight and passenger service which would yield not more than 6 per cent. we will say, on the investment?

Mr. PLUMB. I think not, for this reason: Laws fixing rates must be uniform in the jurisdiction for which they are passed. Otherwise you would have inequality and lack of uniformity in the laws. And that corporation would be most successful which could charge the lowest rate, and that corporation would be destroyed which could not meet the rate which the lowest corporation prescribed. That would be destructive of private interest. It would not conserve it.

Senator KELLOGG. Would not your plan be carried out successfully if the Congress provided in substance that temporarily, until the reasonable value for the use of the property was determined for the war period, there should be paid to the railroads a temporary allowance, as provided in the bill, and either refer to the Interstate Commerce Commission or create a commission to immediately determine what the Government should pay for the use of the property in the broadest terms, so that the basis of arriving at the reasonable compensation which the Government must pay would be left to the final determination of the commission and the court? As the court will do that anyhow why should be provide in the bill a certain form of determination and then have the court say some other form must be adopted?

Mr. PLUMB. I assume that if you provide in your bill that all of the rights and privileges which have been granted to a corporation are to be ascertained and determined you have included everything that that corporation can assert against the State. Now, if you do not limit it to that, then you are going to meet exactly what was met in the valuation cases, where the act required the Interstate Commerce Commission to ascertain the value of the carriers' property, and in those proceedings there was no attempt to find out what interests the carriers had in their property. The property owned and used was valued all alike regardless of any interest, and that was based on that act.

Senator KELLOGG. What the Constitution requires is that if the Government takes over the property it shall pay a reasonable value for its use based on some basis, is it not?

Mr. PLUMB. Yes.

Senator KELLOGG. We start with that. Supposing you were representing the Government and you said, "Well, now, the basis that the court must take into consideration is the amount of the original investment with added investments out of capital, and a reasonable rate of interest on that." Suppose, on the other hand, the roads should claim that they are entitled to the reasonable value of the use of the whole property as it is now found. Under your bill the court would be confined to determine rental value on your basis. Under a general bill, to find the value of use, they could use any basis that the court ultimately determined was legal, could they not?

Mr. PLUMB. They could.

Senator KELLOGG. That is what the court will do anyhow, is it not?

Mr. PLUMB. Not if you direct them to find out what value they are entitled to under their charter. When a railroad asserts a valuable right against a State that right must be based on a charter grant, and courts are not universally so intelligent that they observe that distinction.

Senator KELLOGG. The Supreme Court of the United States decided in a case lately that where the legislature undertook to lay down the rule of the value of the property, excluding certain elements, that the legislature exceeded its authority and that the question was, What was the value of the use? and therefore the legislature could not limit it to any particular form of inquiry as to the value, and if your theory was correct the court could adopt that.

Mr. PLUMB. Not when it is dealing with any property other than that invested in public highways. When it is dealing with an individual's property the individual can assert every right which the Constitution guarantees to him and which he inherits because he was born an individual, but not so with railroads.

Senator KELLOGG. I know; but the fact that a commission was appointed to find out what rental value the Government must pay for the use of the property during war, if we put it in that broad term, that commission might adopt your plan and the court might follow your plan under that authority.

Mr. PLUMB. If the commission adopted the plan and the court followed it, yes.

Senator KELLOGG. Certainly. So that by saying what I suggested, it would not bar the court or bar the commission from adopting your plan of arriving at the value, would it?

Mr. PLUMB. Why, no. It would not be precluded from doing a lawful act.

Senator KELLOGG. Then if the court should ultimately decide that some other plan was the legal one, then the court would be at liberty to adopt that one.

Mr. PLUMB. The court would be at liberty, but you would then go before the Supreme Court, before the Supreme Court would say you were wrong.

Senator KELLOGG. You might go to the Supreme Court under this, and the Supreme Court might say you are wrong, and then we would have to come back for some more legislation.

Mr. PLUMB. The danger to my mind is wholly negligible of the Supreme Court saying that you have deprived the corporation of any right when you have given it all it is entitled to under its charter.

Senator KELLOGG. One other suggestion. In any event, you suggest that this payment be temporary, or this form of determining the compensation, and that some tribunal be authorized to find ultimately what it is. Suppose the original investment in a railroad made a great many years ago was, say, \$10,000,000, and that for many years it paid no dividends at all, and then for many years it paid 6 per cent. What would you say was the present value on which the court should allow them interest?

Mr. PLUMB. Why, in my opinion, a railroad that is prudently constructed, and providently placed is entitled to recoup out of earnings its early losses and its failure to pay a return, and if that diminution in return is still in the property, it should be taken into account. If it has been returned, it has ceased to exist.

Senator KELLOGG. Do you believe that it is possible to arrive at the actual cash investment which has been made in the railroads of the United States?

Mr. PLUMB. Not in all cases, no. In many cases you can not find the actual cash investment; that is, the voucher evidence of the disbursements have been lost or have not been properly kept. But, wherever that is the case, the next best evidence is the expert testimony that can be produced as to what it actually did cost, and you do have records as to when it was built and what there is there, and that estimate can be very accurately made.

Senator KELLOGG. Yes; I think that can in time be fairly accurately made. If simply the original investment in money was the basis, what is the object of all the work that the Interstate Commerce Commission has been doing the last few years?

Mr. PLUMB. If the Interstate Commerce Commission finds what it has attempted to find, to wit, the actual cost to date, which is the first item; the cost of reproduction new, which is the second item; the cost of reproduction less depreciation, which is the third item; an inventory of the property, including all gifts, aids, and donations, and the value of those, then we have got the basis laid on that data to ascertain what the private interest is and the value of the public interest as well.

Senator KELLOGG. They stated to us that it would be at least two years before the inventory is completed, and Mr. Prouty said yesterday that it would be another year after that before the report.

Senator ROBINSON. That period does not involve a determination of the controverted questions that arise concerning the inventories. That relates to the completion of the inventory by the commission itself, and then he stated that it was anticipated that there would be proceedings had to contest that and they would have to be determined afterwards.

Senator KELLOGG. Yes; I think that is right. It would take three years before the commission could make its final report.

Mr. PLUMB. Its final tentative valuation; yes, sir.

Senator KELLOGG. And then the controverted questions would have to be decided, although some of them they will pass on in the meantime.

Mr. PLUMB. We have argued four cases so far.

Senator KELLOGG. Of course, I suppose we can not wait until that time to determine the payments that shall be made to the railroad companies. I take it that they can do that quicker now than any other new tribunal could do it.

Mr. PLUMB. Yes; I think, Senator, that you will have to wait that long before you get a final determination of this question, if the railroads were to file their proceedings before the 1st day of July, as directed here.

Senator ROBINSON. Well, the data that are being collected now under the valuation proceeding would not be available for the purpose of this bill.

Mr. PLUMB. All of the data as to actual cost to date would be available, and all of the inventory as to actual property in existence would be available.

Senator ROBINSON. But this is, as I understand, upon a different basis. Your amendment would involve first an investigation of each

charter to determine the rights granted in the charter, and then an investigation or an inventory to determine the value of the properties embraced within the charter or granted under the charter.

Mr. PLUMB. The inventories would be identical with the inventories now prepared. The method which I would suggest to the Interstate Commerce Commission, if my amendment were adopted, would be this: That they would require the carrier to file its petition setting up all of its claims of value and setting up the grant upon which that claim was asserted, which would require then a study on the part of the Interstate Commerce Commission of the grants which had been asserted. It would not require any further study, because if those grants did support the claim, they would have to be allowed, and if they did not support the claim, certainly the commission would not have to go out and seek any further authority or to find any legislation to controvert the claim, because if the grant is not there, the claim does not exist. Then the inventories that have been prepared would be available for this purpose and all of the examination as to cost to date would be available for this purpose.

Senator ROBINSON. But that would be irrelevant, would it not—much of it, at least?

Mr. PLUMB. I should think it would be all very pertinent. Senator, because if, under the charter—

Senator ROBINSON (interposing). But you are not concerned with what it cost unless it comes within the provisions of the charter grant, and I thought the point that you were making was that the objection to the proceedings that the railroads insist upon is that they want to embrace the property and rights, or alleged rights, that are not granted to them and that the public has expressly or impliedly reserved.

Mr. PLUMB. Yes; but the actual cost—

Senator ROBINSON (interposing). The cost of what?

Mr. PLUMB. That which the carrier has expended in the property is reflected in the cost to date, as reported by the Interstate Commerce Commission, and that report shows whether the money came from the stockholders and bondholders and whether it came out of earnings, where it came from and how it was expended, so that the cost-to-date report of the Interstate Commerce Commission would be one of the basic things to be used in this determination.

Senator ROBINSON. Of course, I can readily see how much of the information that would be gathered would be of value, but I can not understand how you can make all, or even the greater part of the information, applicable to this inquiry, because it is on a different basis, and to ascertain different facts.

Mr. PLUMB. The cost to date is based upon expenditures made. Now, their value, cost of reproduction now, is an estimate of values.

Senator ROBINSON. Expenditures made would not all go in under your system. That is the very point I understood you to be making. That where they made expenditures out of surplus, for instance, that there were many considerations under which they would not be allowed that, unless it was specifically embraced in their charter: unless, in other words, the investment was made under authority granted in the charter, they would not be entitled to recover it, and therefore it would be irrelevant.

Mr. PLUMB. If the expenditure was so made that it did not come within the provisions of the charter. Now, this cost to date shows how the expenditures were made, what they were made for, and from what source they came, so that if in that cost to date we find a lot of money that has been expended for a purpose not authorized by the charter, we know exactly how much to deduct from the total expenditures. And certainly, if the railroad can claim only its investment, it could not base any claim on that which was not an expenditure, so that that list of expenditures, that report of expenditures, would be of exceeding great value and exactly the same report would have to be made on this plan of mine.

Senator WATSON. I just want to ask this question: Whether your proposition involves the original cost of construction, the amount of money placed in the land, the original cost of construction for the railroad itself and its equipment, plus all that has since been added out of capital stock, or money actually paid in outside of the earnings, but that it has no reference to earnings, because, as I understand your theory, the earnings may not belong to the private individuals that compose the corporation, or to the company?

Mr. PLUMB. All moneys received for the consideration for the issuance of securities, or evidences of indebtedness and properly expended for proper purposes are investments, provided that the total amount has been properly maintained.

Senator WATSON. I understand, then, that would not mean any increment growing out of earnings.

Mr. PLUMB. No increment growing out of earnings, or the advanced cost of labor and material or the advance in the value of land units.

Senator KELLOGG. That is all I wish to ask just now.

Senator TOWNSEND. I would like to make one point clear: One of the considerations that the Director General of railroads presents for this legislation is to prevent any financial disturbance at this time. He has asked us to be liberal so as to maintain confidence in the securities of the railroads. Now, I would like to ask you whether, in your judgment, if this plan of yours were adopted at this time at the beginning of the legislation on railroads, it would affect injuriously the holdings of railroad securities?

Mr. PLUMB. I do not believe it would, Senator, for this reason: We have passed through a long period of market declines in railroad securities, until at the present time the sum total of the market values of all securities outstanding, in my opinion, does not exceed the actual investment that has been made, and I have some examples that illustrate that.

We have concluded, practically, the valuation of the Kansas City Southern. In that case, the commission found that the cost to date was \$47,000,000. The Kansas City Southern agrees that that is the expenditure in the existing property, but claims a credit of about \$3,000,000 more for property which it paid for, but which it has now abandoned or given to the Government. So that the total sum of expenditures made in the Kansas City Southern as claimed by the carrier is \$50,000,000. They are capitalized at \$99,000,000. The 1st of June last year the market value of their securities was approximately \$60,000,000. The 1st of January of this year the market value of their securities was approximately \$42,000,000 or \$43,000,000.

Take the Pennsylvania, which is ordinarily supposed to represent investment. That has been below its par for more than six months; so far below its par that I think all of the fictitious securities have been absorbed, and I think Pennsylvania at its present quotation represents not more than it is entitled to represent, perhaps a little less.

I think the same is true of the Chicago, Milwaukee & St. Paul. I think it is generally true of railroad securities.

As to the effect on financial conditions, if it be true that present quotations very nearly approximate actual investment values, then the adoption of this measure could not serve to further depress those securities, because they would be assured of at least that much value. It ought to have some slight tonic effect in that they would be assured for a considerable period of a return considerably in excess of that which would be required to support their present values on an investment basis.

To my mind the facility with which the Government has marketed its \$8,000,000,000 of bonds during the past year has been greatly increased because there was a depressed market in railroad securities. We have outstanding \$21,000,000,000 of railroad securities, \$4,000,000,000 of it duplicate, and \$17,000,000,000 original.

The American people have absorbed that \$17,000,000,000 in 80 years of railroad development, and at the end of 80 years that absorption is not sufficient to support more than 50 or 60 per cent of their market value.

In this emergency we are required to put out by the Government estimated at \$20,000,000,000 to \$25,000,000,000 of securities—a sum vastly in excess of the total railroad securities. Finally, now, to afford the railroads the hope of a permanent arrangement that would bring this security back to the basis on which they were quoted a year ago, and which will be far above the investment basis, then, necessarily we have offered a field for investment of the difference between the then quotations and the quotations to-day; and if we create that attractive field for investment, so many millions or billions of dollars will be diverted from the fund which we could interest in Government securities.

If railroad securities markedly appreciate, it is not in the psychology of the investor to sell an appreciating security in order to invest in a stable security. It is in the psychology of the investor to sell a depreciating security in order to get a stable security. That merely means that if we now increase the market valuation of railroad securities to such an extent that they become a desirable purchase, the money that goes into the purchase of those securities will not be available for the purchase of Government securities.

I am not a banker, I am not a financier, but those principles, to my mind, are so logical and so self-evident that it does not require experience as a banker or a financier to give them approbation.

Senator WATSON. I would like to ask you another question, if you please. I was not here this morning. I am trying to get your viewpoint all the way through. As I understand it, the rate that you want to have fixed is to be based upon the cost of construction plus whatever increase may have been made in capital stock from the sale of securities, and nothing more.

Mr. PLUMB. Yes.

Senator WATSON. Now, let us suppose a case; and if you have answered it, you need not go over it. I can get it in the hearings when I read your testimony. Suppose here is a corporation that has expended all of its earnings—distributed them as dividends among the stockholders. They have taken the money and spent it, and it is gone. Here is another corporation that for a series of years put all the earnings back into the railroads. How do you equalize that under your system? The Government gets more in one instance than it gets in another instance, and does not your system in a way penalize the people that have been provident and have put the earnings back into the railroad to build it up and in a sense favor those who have been less provident and who have expended all their earnings in a personal way?

Mr. PLUMB. If they have expended all the earnings in a personal way to such an extent that they have failed to maintain the integrity of the original investment, then they have lessened their investment, and they will get less for it. If they have gotten a fair return and have put more than a fair return back into the property, they have done that which their charter required them to do; and if they have taken it out in dividends, have fairly maintained the property so that there is no diminution of investment, and have paid all of their profits in dividends and gotten away with it, I can not see how we are going to get it back.

Senator WATSON. No; of course we could not get that back. That is gone.

Mr. PLUMB. The Government by its complaisance and its failure to regulate has been legally deprived of that which really belonged to it, and I do not see how it is going to get it back, but in the other case, where they did put back into the property surplus earnings in addition to their fair return, that "swag is still in the cupboard," and under the jurisdiction of the Government, and they have not gotten away with it. It is there yet, and we are entitled to the benefits of it, and we can keep it.

Senator KELLOGG. The question of the past is rather an important question in dealing with these matters. You take it in Minnesota. I went there 53 years ago. There were no railroads there of any importance. Do you think we could have gotten a railroad built in that country under your basis?

Mr. PLUMB. I do not think you could, and I do not think you did. Fifty-three years ago charters were very liberal, and all that those charters gave you at that time you are entitled to and the railroad is entitled to. I would not take away from them one single advantage that they got under the law.

Senator KELLOGG. If you go back and take a railroad in Minnesota, which, say, twice went through the hands of receivers, and in many years did not pay any dividends whatever, and what they earned in dividends was put in the property, and if you go back and recast the accounts and deduct what they took and paid into the property, why you would not do justice, would you?

Mr. PLUMB. There is no warrant for going back of a receivership, where the investors have taken their loss and gotten out and a new investor comes in on the merits of the proposition. There is certainly no warrant in that case for giving to this new investor the loss

which the previous investor sustained and was willing to give up in order to be relieved of his responsibility.

If the committee is through, I want to introduce to you our statistician, Dr. Frank J. Warren.

Senator GORE. Let me ask you one question.

Mr. PLUMB. Yes, sir.

Senator GORE. I was not here when you began this morning. Have you expressed an opinion with reference to where the power to make rates should be vested? Whether it should continue to be reposed in the Interstate Commerce Commission during this governmental operation?

Mr. PLUMB. I expressed a little while ago my view that when the operation of these railroads was taken over by the Government, the Government merely assumed such functions as the corporation exercised prior to taking over.

Senator GORE. Yes; I remember that.

Mr. PLUMB. And in the absence of an express conferring of other powers, why no other powers were vested.

Senator GORE. I understood that.

Mr. PLUMB. As to the advisability, it seems to me that the long experience of the Interstate Commerce Commission, the data which they have at their control would be of infinitely more value to the Government in fixing rates than the individual judgment of any one person, and furthermore, the fixing of a rate is never an emergency matter. A question of operation may be of extreme urgency, and may have to be decided in a moment, but the question of what rates shall be charged certainly can not be an emergency question that requires immediate action or immediate judgment.

Senator GORE. I do not see how rates could hardly become a military matter. That is a financial and commercial proposition in its nature.

Senator KELLOGG. If you are through, I want to ask one word about one section of the bill, section 9:

The President is hereby authorized, while the carriers are under Federal control, to direct that the Federal workmen's compensation act of September, nineteen hundred and sixteen, shall be extended so as to apply to the carriers' employees on such terms and conditions as will give due consideration to the remedies available under State compensation laws or otherwise.

Are you in favor of that?

Mr. PLUMB. I understand that Mr. Anderson, for the administration, has secured the advice and help of Judge Mack in preparing an amendment to that section.

Senator ROBINSON. That is true.

Mr. PLUMB. And when that amendment is presented he will have no objection to it. It is satisfactory to us.

Senator WATSON. Do you know what the amendment is?

Mr. PLUMB. I know it in substance, but I would not attempt to repeat it. We have just conferred about it orally, and I have not seen it in type.

Senator KELLOGG. You are in favor of the principle?

Mr. PLUMB. If we are Government employees, certainly. If we are not Government employees, I do not see how we can be brought under any Federal compensation act.

Senator WATSON. That is the point. Are you or are you not?

Mr. PLUMB. We do not know. We have asked for light.

Senator WATSON. We do not know either.

Senator GORE. That is a matter that should not be left in the clouds.

Mr. PLUMB. It seems to me there should be some pronouncement, and I understand there will be, and therefore I have not touched on that question at all.

Senator KELLOGG. I would like, if we could, when that measure comes before the committee, to have the expression of the railroad brotherhoods on that subject, because I have received some letters on it.

Senator WATSON. So have I.

Senator KELLOGG. Pro and con on that question—some protesting against it; not from the brotherhoods, however.

Mr. PLUMB. Yes.

Senator KELLOGG. And some in favor of it. Some years ago I argued a case for the four brotherhoods involving that question; that is, I argued a question before a commission appointed by Congress, and I would like to know what their attitude is as to applying a workmen's compensation act to the employees.

Mr. PLUMB. If I may ask Mr. Wills to answer that question—he stands right behind you.

Mr. WILLS. When the brotherhoods feel that the proper time arrives, I have no doubt but what they would like to be heard, but not at present.

Senator KELLOGG. They are asking us to put that clause into this bill—the Government is; that is, the administration.

Mr. PLUMB. There will be a new draft presented, and as soon as that is ready we will be glad to present our views.

Senator UNDERWOOD. Let me call your attention to one proposition. The committee is to close its hearings to-morrow, and to allow Friday and Saturday for argument. Of course that has been acted upon by the committee subject to change by the committee, but that action stands. That might foreclose the opportunity for us to hear your expression on that.

Mr. PLUMB. Might I ask, Senator, who the participants in the argument will be?

Senator UNDERWOOD. I do not know that. The action of the committee in executive session was to the effect that the hearings should close to-morrow night and that an opportunity on Friday and Saturday should be given to those who desired to discuss the bill from a legal standpoint, or to make the arguments in the case. I suppose we have left the question of who shall appear in those matter to the chairman of the committee, and I have not consulted with him. He is out right now, but I suppose he is arranging the time for the gentlemen who desire to be heard on that question.

Mr. PLUMB. I did not know whether it would be appropriate or not, but it occurred to me that if the corporate interests were to be represented in a final argument, I consider their interest only about two-thirds as much as our, and we might like the privilege of participating, too.

Senator ROBINSON. I think there will be no objection or difficulty about that.

Senator UNDERWOOD. That was not the proposition.

Senator ROBINSON. The proposed amendment is now being printed and it will be available within an hour or two, in all probability, for those who are interested in it to study it, and I suggest that we leave the consideration of that amendment until it is available, and proceed with the hearing.

Mr. Bristow vacated the chair very kindly two or three days ago, and I understand that he wants to proceed now. It will not require very long for him to conclude his testimony and he is anxious to finish and I think it would be fair for him to do so. Of course, you may then present your additional witnesses, Mr. Plumb, and it may be printed following your testimony in the record.

Senator Bristow, are you ready to proceed?

Senator UNDERWOOD. Mr. Plumb, I asked you this morning if you would furnish us with a copy of the amendment which you proposed to section 13. Will you furnish that to the stenographer?

Mr. PLUMB. That was drawn not as an amendment to section 13, but as an additional amendment to section 14.

Senator UNDERWOOD. Will you furnish it for the record?

Mr. PLUMB. Yes, sir; I will be glad to do so.

(The amendment referred to is here printed in full, as follows:)

DRAFT OF SUGGESTED AMENDMENT TO H. R. 8172.

Sec. 14. That this act and every provision thereof shall be considered emergency legislation required to meet the conditions brought about by the existence of the war; that this act and every provision thereof shall not be considered as construing or determining any private right, privilege, or interest in any of the systems of transportation affected thereby, nor shall it be considered as construing or determining any of the public rights existing in such systems of transportation, and that this act and each and every of the provisions thereof shall not hereafter be considered a precedent for the determination of such private or public rights, or as in any way affecting the determination of such rights; that upon the termination of the Federal control of transportation systems as herein provided the status of private and public transportation systems shall be restored to the status as it existed before this act was passed.

STATEMENT OF MR. JOSEPH L. BRISTOW—Resumed.

Senator ROBINSON. It was the understanding the other day when you vacated the chair, Mr. Bristow, that Senator Poindexter desired to ask some questions.

Senator POINDEXTER. I did ask some questions before Senator Bristow left the stand, and my purpose in asking him to return was to give him an opportunity to answer those questions relating to the question involved in the thirteenth section of this bill, as to whether or not we are to fix a brief time limit, or whether or not we are to leave that undetermined.

My idea in asking the questions was to show some of the conditions under the present management of the roads.

Mr. BRISTOW. I will read a list of roads showing the per cent return applicable to common stock. I was requested to furnish a copy of the list to Commissioner Anderson in order that he might check it up. I have here copies of the list of roads and the authorities from which these figures were obtained.

(The statement referred to is here printed in full, as follows:)

Average rate of return upon capital and common stock for the 3-year period, 1915-1917.

[25 roads or systems, operating 112,000 miles in 1916.]

	Per cent of return appli- cable to all capital stock outstanding.	Per cent of dividends paid on pre- ferred stock.	Per cent of return appli- cable to com- mon stock.
Atchison, Topeka & Santa Fe System.....	9.67	8.00	12.33
Union Pacific System.....	11.44	4.00	14.76
Southern Pacific System.....	11.66	.....	11.66
Chicago, Milwaukee & St. Paul.....	6.36	7.00	5.75
Chicago, Burlington & Quincy.....	25.16	.....	25.16
Chicago & North Western.....	10.55	6.00	10.99
Great Northern.....	9.67	.....	9.67
Northern Pacific.....	9.75	.....	9.75
Minneapolis, St. Paul & Sault Ste. Marie.....	11.43	7.00	13.65
Chicago, St. Paul, Minneapolis & Omaha.....	9.35	7.00	10.74
Pennsylvania System.....	10.63	.....	10.63
New York Central Lines.....	13.07	.....	13.07
Baltimore & Ohio R. R.....	5.84	4.00	6.55
Reading System.....	11.64	.....	11.64
Delaware, Lackawanna & Western.....	20.02	.....	20.02
Lehigh Valley.....	11.31	.....	11.31
Central R. R. of New Jersey.....	19.49	.....	19.49
Delaware & Hudson.....	11.38	.....	11.38
Illinois Central.....	10.82	.....	10.82
Louisville & Nashville.....	16.14	.....	16.14
Norfolk & Western.....	12.19	4.00	13.83
Atlantic Coast Line.....	10.48	5.00	10.49
Central of Georgia.....	9.91	6.00	21.62
Nashville, Chattanooga & St. Louis.....	12.77	.....	12.77
Cincinnati, New Orleans & Texas Pacific.....	40.49	5.00	69.60
Average 25 roads or systems.....	11.21	.....	12.02

NOTE.—The figures for the 8 eastern roads are taken from the exhibit filed by the carriers in the Fifteen Per Cent case (Ex Parte, 57). The figures for the A. T. & S. F. for 1917 are taken from the annual report of that company to its stockholders. For these 9 roads the figures are actual for the three years. All of the figures for the other 16 roads for 1917 are not available. For 1915 and 1916 they are taken from the exhibit filed by the Interstate Commerce Commission with the Senate Interstate Commerce Committee; and the net railway operating income for 1917 is taken from the same source, except that system figures for the Union Pacific and Southern Pacific are taken from reports to the Interstate Commerce Commission for various affiliated roads and combined into system figures. Whatever increase or decrease is shown in such net operating income from compared with 1916 for each road has been added to or deducted from the net corporate income for 1916, and the same amount of stocks and bonds outstanding as shown for 1916 has been used for 1917. Whatever error this method may develop is not thought to be sufficient to materially affect the result, as the figures are actual for the three years for 9 roads and for the other 16 roads they are actual for two of the three years and to a considerable extent for the third.

Mr. Brisrow. I made the statement that I thought the Missouri Pacific Railroad, upon the basis of compensation provided, would have a deficit and that it would not furnish it with a sufficient revenue to pay the interest on its bonded debt. Upon further inquiry I find that its return for 1917 was so much better than for 1916 and 1915 that it would have a small surplus after paying the interest on its bonded indebtedness. I also stated that the M. K. & T. would not have sufficient. I find upon examination that the M. K. & T. would have, taking the three years, \$491,000 as surplus over and above the interest on its bonded obligations that might be applied to the payment of dividends on \$76,000,000 of stock, so that the return would be a small fraction of 1 per cent.

I have here a list of some of the roads which under this compensation rule provided would not have a sufficient return to pay interest on their bonded obligations.

(The statement referred to is here printed in full, as follows:)

There were several roads which did not earn interest charged in the fiscal years 1915 and 1916, for which no figures have been published for the fiscal year 1917. Among such roads are:

	Miles.
International & Great Northern.....	1,159
San Antonio & Aransas Pass (bonds are guaranteed by Southern Pacific).....	724
Duluth, South Shore & Atlantic (controlled by Canadian Pacific).....	603
New Orleans, Mobile & Chicago (formerly owned by Frisco and Louisville & Nashville).....	402
Trinity & Brazos Valley (formerly controlled by Rock Island and Colorado Southern).....	357
Colorado Midland.....	337
Louisiana Railway & Navigation Co.....	350
Missouri, Oklahoma & Gulf.....	333
Tennessee Central.....	283
Kansas City, Mexico & Orient.....	738
and several other lines operating less mileage.	

Mr. BRISTOW. The International & Great Northern, which I believe is a Texas road, 1,159 miles in length; San Antonio & Aransas Pass, 724 miles in length; Duluth, South Shore & Atlantic, 603 miles; New Orleans, Mobile and Chicago, 402 miles; Trinity & Brazos Valley, 357 miles; Colorado Midland, 337 miles; Louisiana Railway & Navigation Co., 350 miles; Missouri, Oklahoma & Gulf, 333 miles; Tennessee Central, 283 miles; Kansas City, Mexico & Orient, 738 miles; and there are several other lines that would not.

As to the inquiries made by Senator Poindexter, as I understood the Senator, one was in regard to back hauls—

Senator POINDEXTER. And the other in regard to the suppression by the railroads of water competition?

Mr. BRISTOW. Yes. Just what phase of those two questions the Senator wanted me to discuss was not exactly clear. I suppose by back haul you refer to what is commonly known as the effects of the long-and-short haul controversy. See if I get your point.

As it is now, or as it used to be, and I understand it is yet, on a carload of merchandise, for instance, the rate from Chicago to Spokane would be a fixed amount; we will say, for illustration, \$1 a hundred. From Chicago to Seattle, beyond Spokane, would be the same.

Senator POINDEXTER. No. That is not it, Senator.

Mr. BRISTOW. Oh, excuse me. It is, we will say, from Chicago to Seattle \$1 per hundred, and from Chicago to Spokane it is \$1 plus the rate from Seattle back to Spokane.

Senator POINDEXTER. That illustrates the principle. There are some variations from that, sometimes more than that and sometimes less, but the phase of the question that is relevant to this inquiry and that I intended to ask you about was the amount of unnecessary transportation involved in that system in the double haul to Seattle and back to Spokane, instead of putting the goods on at Spokane or in making the rates based upon that.

Mr. BRISTOW. Senator, I think the fundamental difficulty that has been developed as a result of that system is in the congestion of terminals. As a matter of fact, the merchandise is not hauled, except in exceptional cases, from Chicago to Seattle and back to Spokane. It stops at Spokane and the railroad collects the same rate from the shipper at Spokane as it would have collected if it did carry it on to Seattle and brought it back again.

Senator POINDEXTER. In the majority of cases, of course, the system develops a great depot at Seattle, with resulting shipments back of a certain percentage of the supplies of the interior country.

Mr. BRISTOW. I will illustrate this by citing the situation in and around Kansas City, because I am so much more familiar with it and I can illustrate the idea. The rates in this country have been made so as to congest the industries in certain commercial centers. They have basing lines and certain points to and from which rates are made. The result of that at Chicago and Kansas City and at other similar points is that a large quantity of the merchandise is congregated there and then it is distributed from there.

Great industries are built up there by an artificial rate-making system that otherwise would not have been built up in these centers if the rates had been normal and based upon the service rendered.

There are some large packing houses at Kansas City. It is a great traffic center. Some 25 or 30 years ago I remember when there were small packing houses in other points near Kansas City. Those have all been put out of business practically, and the business has been centered in Kansas City, where the big packing houses are located, and that was done by a system of railway rates, making low rates into Kansas City, sometimes a less rate into Kansas City from where the live stock grew, out in western and central Kansas, than to the intermediate points. And then the rate on the dressed product from Kansas City back to the points of consumption would be the same as if the articles had been shipped from points between the point of consumption and Kansas City.

The result has been, as I said before the Newlands committee, every steer that grows in central or western Kansas makes a trip or two to Kansas City and back during his life. He may be born out in western Kansas in the grazing region, and when the producer of this animal sells him he may not be a feeder. He wants to sell him to somebody who buys cattle and feeds them but does not grow them. A carload or a trainload, as the case may be, of these young cattle is gathered up and sent to Kansas City, and there the producers buy them and ship them back, because that has been made the market. That shipment may be 100 miles; it may be 300 miles into this market. It has been made the market by a system of rates that are inequitable and, I think, unjust. This buyer will purchase his carload, or a number of carloads, in Kansas City, and they are shipped back to be fed.

I have known them to go back into the same county where they were shipped from and fed and then shipped to Kansas City for butcher, and sometimes they are bought by dealers there and finished in another way in the process of producing the higher grade meats, and they are shipped out again to a feeder somewhere, and then ultimately back again.

This system has been developed because it creates business—transportation business. The railways are in business for profit, for gain; and, like any other business institutions, if they can develop business that is profitable, they desire to do it. If they can so arrange their rates and their schedules as to create profitable business, why, it is to their commercial and financial interest to do so; so the centering of the business that I am now discussing, in Kansas City, so as to

get this movement of live stock, and then the shipment of the products—the manufactured meat, the dressed products—back into the country 50 or 100 or 250 or 400 miles, as the case may be, creates a higher and better paying business.

Senator POINDEXTER. Let me ask you there what you mean by "business"? Do you mean transportation business?

Mr. BRISTOW. Yes; it gives them more profit out of the business. It develops transportation business for the carriers. Now, that system has prevailed throughout the United States, and it has resulted in the creation of a lot of unnecessary business, because it pays the carriers to handle it.

There have only been a few periods in the history of transportation in the United States where the railroads have had more business than they could do. We seem to be in one of those periods now. There have not been many of them. They have sought, in my experience, always to develop all the business they could.

I think that the system of rate making which has resulted in this congestion of business in certain great terminals, at the expense of the smaller commercial communities, has been very unjust, and we passed, as Senator Poindexter remembers, some years ago an amendment to the interstate commerce law, known as the long-and-short-haul clause, or section 4, to stop it.

It has not been successful yet, because, unfortunately, the Interstate Commerce Commission has not enforced its provisions as was expected that it would, and if it had been effective and the principle that is outlined in that legislation had been applied, a great deal of the congestion which we now have would not exist.

I might illustrate this in many other ways. What I have said in regard to live stock simply illustrates the system, and it is applied to many industries. I remember when we had a paper mill at Lawrence, Kans., that was doing a very prosperous business with about 300 employees; it was bought by a syndicate, or concern that was engaged in the purchase of these things, and ultimately junked because the rate system made it more profitable for them to manufacture the paper, which had been manufactured there or some other central point.

So that the whole system, as developed, has been looking toward the creation of long hauls as against short hauls.

Taking it in my own town—or in my own community, I should say—McPherson is 35 miles south of Salina, Kans. We have a number of wholesale grocery houses in Salina, Kans. The Union Pacific runs from Salina to McPherson. The Santa Fe runs from Salina to McPherson, but to ship from Salina to McPherson over the Santa Fe the merchandise must be carried from Salina to Strong City, a distance, as I remember, of about 80 or 90 miles; and from Strong City is taken by the Santa Fe to McPherson, a similar distance. I may be somewhat mistaken in these miles, but it will make a movement of that merchandise of at least 150 miles, while if it was shipped over the Union Pacific it would go 35 miles on a straight line south.

Now, the Santa Fe has made rates to meet the Union Pacific rate between Salina and McPherson, and it carries that, or it used to. I do not know whether it does now or not, since the cars have become in such demand, but it used to set a car out at Salina so many

times a week to be filled with merchandise to be shipped to McPherson, and that car would be carried this 150 miles, and the Santa Fe would receive the same rate as the Union Pacific would if it had carried it 35 miles.

Yet it charged all intermediate points that were farther than 35 miles a higher rate than it charged at McPherson. It charged the mileage rate on all intermediate points, but when it got to McPherson it met the short-line rate.

Now, as I understand, Senator, what you have in mind that these long hauls which may be denominated back hauls, are unnecessary and undesirable, and it is a waste of transportation energies.

Senator POINDEXTER. An economic waste; and I desire to point it out as one of the great and important conditions that we are dealing with here, what to do with these railroads necessarily involved in this bill, as one of the results of the present system, and furthermore, that it bears upon the question of just compensation to the railroads when being taken over. I do not want you to take time now to go into that, but answering your question as to what I had in mind. They have the right to consider whether or not the system of compensation at present is based upon a reasonable method of transportation or system of transportation.

Mr. BRISTOW. I am free to say, Senator, that I think that the system is entirely wrong, and that it should be corrected; and while I do not want to criticize the Interstate Commerce Commission or in any way minimize the great work that it has done and the many abuses it has corrected, I think it has been delinquent in the enforcement of the statute provided to break up just such conditions as this.

As to the development of waterways I desire to say that I think that the greatest evil that has come from this imperfect and unwise system of rate making has been the destruction of water transportation. I do not believe that water competition should be a factor in the making of railroad rates. I believe that the Interstate Commerce Commission ought to be required to disregard water competition in the making of railroad rates.

The railways, by lessening the rates on competing water points, reducing them to a point where the water carriers could not accept the commerce and handle it, and then make up the loss, if loss there was, or penalize the communities that were not on water by excessive rates, have destroyed water competition.

If that had not been permitted, this Government to-day would not be required to spend a billion dollars to create a merchant marine. The system of rate making which has been recognized by the American people and recognized by the Interstate Commerce Commission has destroyed the American merchant marine absolutely.

Senator POINDEXTER. Will you point out briefly how that occurs?

Mr. BRISTOW. Whether there may have been some slight changes in rates the last year or two I can not say, as I have not examined them for a year or two. But, to illustrate, formerly and comparatively recently the rates on products from California, we will say dried fruits or canned goods, to Galveston over the Southern Pacific Railroad were the same as they were to New York. That is, the Southern Pacific Railroad would carry a carload of California products to Galveston for the same rate that it charged if it carried that same

carload on to New York, so that any steamship line that was seeking to do business between Galveston and New York could get no business unless it belonged to a railroad. The Southern Pacific, in order to control the rates, acquired the control of a steamship line, and it made the rates over the railroad and its steamship line to New York the same as it did to Galveston. And I know that steamship owners who sought to develop a business by water between these ports, Galveston and other Gulf ports to New York, were unable to do so because the railway rates were so adjusted that unless they were under the control of a railroad they could not get any business.

There was at one time, you gentlemen will remember, a transcontinental railway pool which controlled the rates between the Pacific and the Atlantic coast ports of the United States. This transcontinental railway pool acquired control of the Panama Railroad & Steamship Line, and it paid at one time approximately \$1,000,000 a year for the privilege of controlling the rates via Panama, which was afterwards reduced. And then, after a congressional investigation, that pool was destroyed or abandoned, and the Southern Pacific interests acquired the Pacific Mail Steamship Co.

Senator KELLOGG. When was that?

Mr. BRISTOW. John R. Fellowes, I think, was chairman of the committee that made the investigation; I think in the eighties, but the date has slipped my mind.

The Southern Pacific Railroad interest then acquired the Pacific Mail Steamship Co., and it made a contract with the Panama Railroad Co., under the French régime, that gave it the exclusive right of through bills of lading between Atlantic and Pacific coast ports, and by that process water competition with the transcontinental railroads between the two coasts was controlled. There were then sailing vessels that competed by way of Cape Horn, but the distance was so great that of course the competition was not affected.

By processes of this kind, that have been indulged in by our railroads on the ocean, between our ocean ports on the Atlantic and the Pacific coasts, there are dozens of illustrations of a similar character that could be cited whereby the carriers, under the guise of meeting water competition, of reducing rates between ports in order to meet water competition and destroy it, have made it impossible to develop a coastwise merchant marine anything like it would have been if the rates had not been so used to destroy this competition.

Take the Mississippi River. I made an investigation some years ago, and I discovered that the rates, as I cited to the Newlands committee, between Memphis and New Orleans on bales of cotton was 17 cents per 100 pounds. That is 450 miles, approximately. The rate from Meridian, Miss., to New Orleans, 196 miles, was 36 cents per 100 pounds, more than twice as much as between Memphis and New Orleans, a distance of 450 miles, or more than twice the distance and less than one-half the rate. That was justified upon the ground that the Memphis-New Orleans rate met water competition, and therefore it was allowable, while the other was a reasonable rate for a rail haul.

Now, the result has been that the great amount of transportation by water that existed on the Mississippi River many years ago has disappeared, some of it because railroad transportation is more speedy and more efficient for certain lines of merchandise that need

prompt movement; some of it because—most of it because the rates were reduced below the profit line by the railroads in order to destroy this competition, the competition of independent steamboats.

Senator POINDEXTER. And the railroads making up the difference upon the intermediate points?

Mr. BRISTOW. Upon the intermediate points that did not have the opportunity of water competition.

Senator GORE. Then they used to raise the rates after they destroyed water competition, did they not?

Mr. BRISTOW. Oh, surely. After they destroyed the competition why they would sometimes raise the rate, and then if competition appeared again they would again be reduced. I know there was a boat line established between New Orleans and either San Francisco or Los Angeles some years ago, that sought to do business by way of Panama, and the Southern Pacific reduced the rates between New Orleans and the Pacific coast so low that this boat line that was started only lasted some two or three months, and then when it was destroyed, the men engaged in this enterprise were broken up, the rates immediately went up, so that no man with any judgment that did not have money to throw away would undertake to establish a steamship line in competition with a railroad line between points that the railroad could reach. And this system of rate making has resulted in preventing the development of the American merchant marine, inland as well as on the seas, and we have got this crisis now in our national history that nobody ever anticipated, but which is chargeable more to this unjust and selfish, and I think indefensible system, of fixing the railroad rates in our country than to anything else.

Now, Senators, if there is anything else you wish to inquire I shall be glad to answer you.

Senator GORE. Senator, what would be your solution of that? How would you adjust the rates as between New Orleans—take those now before the canal was constructed; what would be your plan?

Mr. BRISTOW. I think if a railroad company fixed a rate to New York of 50 cents per 100 pounds on canned goods, a distance of 3,000 miles, from points in California to New York, that the Interstate Commerce Commission would have been justified in fixing it for 1,500 miles, say, at 30 cents, upon the presumption that that was comparatively a fair rate for that portion of the service that it would have resulted in fair and consistent rates.

Senator GORE. You think freight ought to have gone by water that could go by water and that by rail which could go by rail?

Mr. BRISTOW. Yes; they even absorb. I know of steel shipped from Pittsburgh to New York and loaded in boats in New York and shipped around to San Francisco by Panama, or around the Horn, and the railways would adjust the rates on these same commodities from Pittsburgh to Pacific coast points so as to meet that competition utterly disregarding the cost of the movement, and American railways have transported millions of tons of heavy commodities across the continent at rates that could not be remunerative in order to prevent steamships that could have carried at remunerative rates. Anyone familiar with the struggles of steamship lines on the Pacific coast, the American Hawaiian Line, which

had a contract with the American Sugar Refining Co. for sugar at Hawaii to be transported to New York and other points, must be convinced that the principle that is embodied in the long-and-short-haul legislation some years ago was vital to the best interests of the country, and if it had been followed in the spirit with which the legislation intended that it should be the American merchant marine would have been very much better than it is now.

I do not think water competition should be considered a factor in determining the reasonableness of the rate for the service rendered. Whether they have got to make an unreasonably low rate in order to destroy some other legitimate transportation company or business that is just as essential to the American welfare as the railroad is certainly is not a justification for extremely low rates.

The CHAIRMAN. Have you concluded, Senator?

Mr. BRISTOW. I have.

Senator GORE. There is one other question that I would like to ask, Mr. Chairman. The clause in the law as to substantially similar circumstances, you think that ought to be stricken out?

Mr. BRISTOW. That was stricken out in the legislation that was last enacted, but the Interstate Commerce Commission was given permission, after examination, to make exceptions, and that has been so construed that while that law was passed some six or seven years ago, it is not effective yet.

Senator ROBINSON. Mr. Cary, of Louisville, Ky., has been here since the hearings began. He represents the interests of a certain class of shippers, in understand the live-stock interests, and it will take him only a few minutes to make his statement. If there is no objection we will call Mr. Cary.

Mr. THOM. Mr. Chairman, while this gentleman is taking his seat, I should like to say that Mr. Kruttschnitt, when he was on the stand, was asked a question by Senator Cummins which involved making some comparisons. He sent me an answer with a diagram. I should like to insert that at the proper place in the record.

Senator ROBINSON. Have you called the clerk's attention to it?

Mr. THOM. No; I have not.

Senator ROBINSON. I understand that Mr. Kruttschnitt's testimony is now being printed.

Mr. THOM. Very well, then, I will ask that it be inserted at this point.

Complying with the suggestion of Senator Cummins—that "If it occurs to you to institute some comparison between 1916 and any year prior to 1912, it might furnish some information—I do not know what would be the result, but we have got to find a normal year somewhere some time."

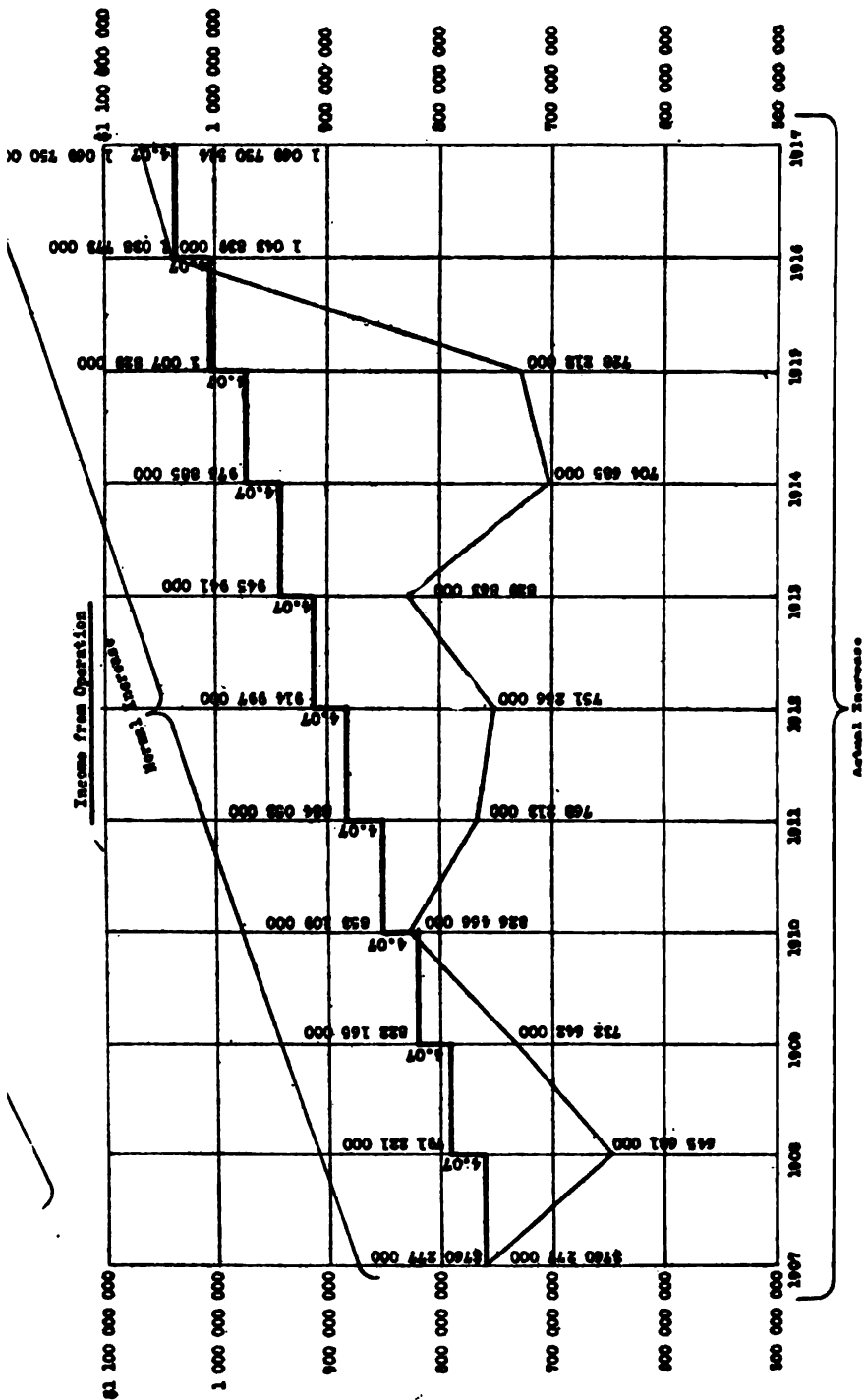
The book cost of road and equipment and the income from operation for the 10 years preceding 1917, taken from the Thirty-first Annual Report of the Interstate Commerce Commission, December 1, 1917, are charted on the inclosed diagram.

Cost of road and equipment increased from \$13,030,344,000 in 1907 to \$17,800,000,000 (partly estimated) in 1917, or 37 per cent.

The normal increase per year for this period is 3.7 per cent, and this increase is shown graphically in the full black line rising in steps on the diagram on the upper half of the sheet.

The irregular, broken line shows for each year the actual increase. Starting from the same point in 1907, it is below the normal in 1908, 1909, and 1910, and is above the normal in all the years thereafter.

The percentage of increase in both lines is the same, to wit, 37 per cent; but on the normal line the increase is uniform each year. While the actual increase



is normal in 1907 and 1917, and almost normal in 1910, the intervening years are above or below normal to a very pronounced extent.

The income from operation is charted on the lower half of the sheet. The full black line rising in steps shows the normal rate of 4.07 per cent for the 10 years. The irregular, broken line shows the actual income each year.

It will be observed that the actual income coincides with the normal income in 1907 and 1917; that 1910 approaches very nearly being a normal year; that 1916 is better than a normal year; while all the others are below normal.

The typewritten statement inclosed shows to what extent each year falls below or rises above the normal.

If the guarantee be based on the two normal years ending June 30 next preceding the date when the Government took over the roads, it will be an average between \$1,069,750,000 and \$1,038,773,000, diminished by \$5,066,000, the amount that it exceeds the normal. Making this subtraction, and computing the average it becomes \$1,054,261,000.

Normal, contrasted with actual, increases in income from operation.

[Thirty-first Annual Report of Interstate Commerce Commission, Dec. 1, 1917.]

Year.	Income from operation.	Normal increase.	Below normal.	Above normal.
1907.....	\$760,277,000	\$760,277,000	.....	.....
1908.....	645,681,000	791,221,000	\$145,540,000	.....
1909.....	732,642,000	822,185,000	89,523,000	.....
1910.....	826,406,000	853,109,000	26,463,000	.....
1911.....	768,213,000	884,053,000	115,840,000	.....
1912.....	751,266,000	914,997,000	163,731,000	.....
1913.....	839,865,000	945,941,000	116,076,000	.....
1914.....	704,685,000	976,885,000	272,200,000	.....
1915.....	728,212,000	1,007,829,000	279,617,000	.....
1916.....	1,013,830,000	1,038,773,000	.....	\$5,066,000
1917.....	1,069,750,514	1,069,750,000	.....	.....

Normal years, 1907, 1917. Above normal, 1916. Below normal, 1908-1915.

STATEMENT OF MR. GRADDY CARY, OF LOUISVILLE, KY.

Senator ROBINSON. Mr. Cary, state your address, and business, and the interests for which you appear.

Mr. CARY. My name is Graddy Cary; residence, Louisville, Ky. I am here at the request of the National Live Stock Shippers' Protective League.

Gentlemen, I will try to be as brief as I can. In so far as possible we wish to avoid any quarrel with the railroads about what they are to receive. We realize they ought to be liberally dealt with, but we feel we are vitally interested in who is going to pay the bill, if there is a deficit. For that reason we urge that you permit the Interstate Commerce Commission to continue to pass on the question of rates. We are satisfied there will be a deficit if you guarantee to these roads returns contemplated by this bill. If there is a deficit, the most natural thing in the world is to first figure how the shippers can be taxed to meet that deficit. If that should arise we feel we should have some forum where we could go to make a showing as to the reasonableness of what we are paying for the service rendered. We believe that any charge that is assessed in excess of a reasonable charge for the service rendered is a tax, and for that reason we urge that the commission be permitted to continue to pass on this question of rates.

I have been asked to put into this record certain figures that may or may not have some bearing on the question of this guaranty. I

am referring to an exhibit that was filed in the Fifteen Per Cent case, which has not been brought down to date in so far as the country as a whole is affected; it was brought down to date in the East on the rehearing of the Fifteen Per Cent case. Whether these figures will be helpful or not I do not know. I offer them for what they may be worth.

The roads handling two-thirds of the traffic, that is reduced to ton-miles, have, since 1907, put nearly \$700,000,000 more into their property than they have increased their capital. In addition to this \$700,000,000 they have since 1907 increased their surplus over one-half billion dollars. In addition to these large sums they had on hand at the time this exhibit was prepared substantially over one thousand million dollars.

We believe if they are guaranteed a return which enables them to pile up this surplus, and in addition you guarantee to keep their properties in the condition you take them over, it is certain a deficit will result, and we are largely interested in who is going to take care of that deficit.

I realize that this matter has been pretty fully discussed before this committee, and I hesitate to ask any time at all, but the shipper of live stock is one of the few people who can not pass the charge on somebody else. Live stock is sold on an open market, and whether the shipper ships 1,000 miles or 100 miles, the freight rate comes out of him, and we ask that if this burden is to be put on us, that we at least be afforded an opportunity to show that our business is paying what the traffic is reasonably worth, and that no one man be permitted to impose a tax, for whatever is in addition to a reasonable charge for the service rendered is certainly a tax.

I regret that it has been necessary to ask for any time, Mr. Chairman, but I wanted to get those facts before you.

Senator ROBINSON. Have you any tables you want to insert in the record?

Mr. CARY. I do not think it is necessary. This whole exhibit was introduced in the Fifteen Per Cent case and has heretofore been printed in the Congressional Record.

Senator ROBINSON. Does any member of the committee wish to ask Mr. Cary any questions?

Senator GORE. You might add to your statement a reference to the Congressional Record.

Mr. CARY. I should like very much to do that. I think it was some time during October, but I have not been able to locate it.

This exhibit, as a whole, has been printed in the Congressional Record and the individual pages of this exhibit take up individual roads and give considerable information relative to the individual roads. I have merely given you a few figures from the recapitulation.

Senator ROBINSON. If there is any part of it you desire to insert in connection with your remarks, you may submit it to the stenographer.

Mr. PLUMB. Dr. Warne is a graduate of the University of Pennsylvania, specializing in economics and American history, and for several years thereafter was managing editor of the *Railway World*. He has frequently contributed to the leading economic journals of the country and has served as statistician to the board of arbitration appointed by President Taft to settle the concerted wage movement

of the Brotherhood of Locomotive Engineers in the eastern territory in 1912, in the Adamson law labor investigation, and for various labor investigations on behalf of the brotherhoods. For something like 20 years he has made an intensive and extensive study of transportation problems and transportation statistics.

I submitted to Dr. Warne the exhibit introduced by Mr. Thom, showing the property investment account, the average net earnings for the period of the years mentioned, and the average net earnings. He has made an analysis of that exhibit, and, without changing any of the figures, or substituting any figures therefor, has rearranged this exhibit in groupings that it should naturally have followed, and will show you the results which would follow from that rearrangement.

Senator ROBINSON. Very well, we will hear Mr. Warne.

STATEMENT OF MR. FRANK J. WARNE.

Mr. WARNE. Mr. Chairman and gentlemen of the committee, I intended first to make some statement as regards the intercorporate railway stock ownership of the companies in order to show the relationship of the criticism I intend to make in these statements. I will reserve that until later if it is possible to take it up then.

I should like to say that Mr. Plumb's able presentation before this committee has been the result of an experience extending now over nearly eight years in the wage movements of the railway brotherhoods in all of the Territories of the United States. In order to make the emphasis striking, I should like to call your attention to the fact that in 1910, when these differences first started, the railway brotherhoods appeared before the Interstate Commerce Commission and supported the contention of the railroads for an increase in railway rates. That policy, of course, has been abandoned as the result of our experience in the arbitration cases and as the result of our experience in ascertaining facts as regards the railroads. Naturally, we had to go into all phases of railway operation, the physical construction of property, the financial operation, the ton mileage, the train mileage, and even into the corporate organization of these railway systems in order to get our cause properly before these boards of arbitration and in order to answer the contentions of the railroads.

It may interest the committee to know that in our first arbitration we were constantly met by the claim of the railroads of their inability to pay any increase in wages, but, as the result of some of our studies and some of our information before these boards of arbitration, the railroads have not in recent years made that contention. They do not now contend that they are unable to pay increases in wages.

I brought with me, and it perhaps might be of interest to the committee, a concentrated result of one of these studies showing the intercorporate railway stock ownership and the interlocking directorates of every important railroad of the United States.

Senator GORE. Of what date?

Mr. WARNE. This is based on information filed with the Interstate Commerce Commission for the year 1913. The work was done in 1914 and 1915.

I shall not take up the time of this committee in an extended discussion of intercorporate railway stock ownership. Its great importance in relation to the subject matter now before this committee is briefly indicated in the fact that in the eastern territory 12 systems control 68 per cent of the companies and 79 per cent of the single track mileage; in the western territory 13 systems control 24 per cent of the companies and 78 per cent of the mileage, and in the southern territory 6 systems control 31 per cent of the companies and 74 per cent of the mileage. In the eastern territory the number of separate companies so controlled is 598, in the western 188, and in the southern 159. These figures include only majority owned companies and do not account for the very large number of companies and the extensive mileage in which the systems have minority stock representation, in cases resulting in joint control. Nor are terminal and switching companies included. A total of 2,187 separately incorporated railway companies, with owned single track mileage of 246,817 miles (excluding switching and terminal companies), report to the Interstate Commerce Commission. As many as 945 of these companies, with a single track mileage of 191,000 miles are controlled through majority stock ownership by the 31 systems. That is, nearly four-fifths of the single track mileage of the United States is today controlled directly by the 31 systems.

A fact I wish to emphasize—a fundamental fact dominating all other facts upon which this committee is called upon to frame legislation, is this concentration through intercorporate railway stock ownership and lease of the steam rail transportation interests of the country. This ownership affects capitalization, property investment, earnings, rates, State versus Federal regulation—in brief, virtually all the various economic, political, and social aspects which give to us our present day railway problem. This relationship is to-day the dominant underlying characteristic of the transportation industry in every section of the United States. It affects virtually all the issues involved in the relation of these instrumentalities of commerce to the National and State governments, to the great majority of shippers, to the wage earners, and to the public. It dominates and determines nearly every important question affecting interstate commerce and its regulation. Its ramifications are so intricate, complex, confusing, and bewildering that it is not always possible to secure a clear perspective of their far-reaching effects. By means of it railway companies, brought into existence and given a legal individuality by a State charter, are welded and held together and their individuality destroyed or merged into highly centralized systems extending over many States.

I might state parenthetically that this intercorporate railway stock ownership is the railway answer to the Sherman Antitrust law. It is based on the control of competition.

One of the results is that many railway companies legally "independent" are economically dependent and are mere parts of a larger whole.

This committee is sufficiently well informed and is intelligent enough to recognize as a truism the statement that the most important single fact in connection with railway earnings is not the

earnings themselves of a particular railroad but those earnings considered in relation to the ownership of that particular company. This is all the more important when this ownership is intercorporate, that is, when this ownership is by another railroad company.

It results, in effect, in all of the accounts of this large number of stock-owned roads, being merely a matter of bookkeeping. The parent company can direct traffic, can divide the rate, and can do innumerable things affecting the actual results as reported to the commission of all of the matters affecting the accounts of these subsidiary companies.

This brings me to a fundamental criticism of the statistical compilation the railroads have presented in evidence before this committee and which purports to show the per cent return to the various carriers by relating their net operating income to their property investment accounts. Without accepting these figures as representing the facts—on the contrary, denying that they do represent the facts—I wish to emphasize as strongly as possible the grievous error of such a presentation. Its purport is to give to this committee an idea of the per cent earnings of these separate properties; that is, the return upon investment. But under the system of intercorporate ownership many of the railway companies in the compilation should not be regarded from the purely investment standpoint. This is true because of the important fact that such ownership has no relation to and is not based upon the principle of investment that prevails in ordinary circumstances.

We have as authority this statement of the Interstate Commerce Commission in its Special Report on Intercorporate Relationship of Railroads:

The conclusion is indisputable that railway corporations do not purchase railway stock widely for purposes of investment, but that the holdings in the stock of other railways are rather for the purpose of controlling or influencing the management of corporations whose operations are of real concern to the holding company. Such holdings are either majority holdings which insure control or minority holdings of sufficient amount to guarantee an effective influence in management.

The reason the interlocking directorates of the railways of the United States are coupled with these charts, showing intercorporate ownership, is due to the fact that intercorporate ownership is absolutely worthless without interlocking directorates. In other words, interlocking directorates is the machinery by which intercorporate ownership is put into practical effect.

Senator POMERENE. You have spoken of your studies of intercorporate ownership and interlocking directorates as being of the year 1913.

Mr. WARNE. Yes.

Senator POMERENE. Is it your claim that those same conditions prevail to-day and since the passage of the Clayton law?

Mr. WARNE. Yes, sir. The only possible difference has been a change, possibly, of the personnel, the individuals. The principles of interlocking directorates still exist on all these railroads. Most of the resignations of interlocking directorates I have any information about are directorates of financial concerns from other bank direc-

torates. I do not know of any railway director who has resigned in consequence of the Clayton Act. There may be some, but I do not know of any.

The reason this is not up to date is because it took us eight months, and if you have time to examine that you will see how much time was necessary to prepare those charts. It took 20 people about eight months, devoting their time to nothing else but the preparation of those charts, and it was not absolutely necessary to bring it down to date, because, as I say, the principle is there, and all you will find is the change of certain individuals in the corporate directorates.

Senator CUMMINS. Is there not an exception in the Clayton law that practically covers the matter? I can not quote the language. I think there is an exception in the Clayton law that practically relieves the railroads from the prohibition against interlocking directorates.

Mr. WARNE. I might say here that if the prohibition of interlocking directorates extended to the railroads this intercorporate ownership machinery could not work, because it requires a director of the parent company to be also a director in the subsidiary company, as a rule, in order to carry on the machinery.

Through this machinery of intercorporate ownership the parent company may divide the tonnage or can divide the rate of the subsidiary companies in any way it pleases. For you will find that the question of division of rates can not come before the Interstate Commerce Commission unless one of the parties to that division makes a complaint. Well, no subsidiary company is going to make a complaint against the parent company when the act that is done is done practically by the same directors prohibiting the subsidiaries from making any protest to the Interstate Commerce Commission.

By means of this control the holding or parent companies reap advantages in other ways than that of a return upon investment, such as through the division of traffic and of rates, the control of competition, etc.

By and of itself it is of little importance to this committee in the ascertainment of the true facts to be told in a statistical exhibit that the Baltimore, Chesapeake & Atlantic, for illustration, earns 1.16 per cent on its property investment. It does become of importance, however, when it is disclosed that that company is owned and controlled by the Pennsylvania Railroad, which, according to the exhibit, earns 5.48 per cent; and that this parent company also owns and controls the Cumberland Valley, which earns 12.46 per cent, as well as other subsidiaries.

The point is that the earnings of any particular property should be considered in connection not only with the earnings of its holding or parent company but also with the earnings of all other subsidiary companies owned by the same parent company.

In other words, the earnings of subsidiary companies should not be shown separate and apart from those of the parent company. It would be something like showing the earnings of the different divisions of the same road without presenting the earnings of that road in its entirety. Some divisions may have small earnings and other divisions large earnings, but the important fact is the earnings of

the railroad company. So it is with subsidiary companies in relation to the system. This point is emphasized by the fact that constantly these subsidiary companies are being merged into the parent company, as illustrated in the New York Central's absorption of the Lake Shore, of the Union Pacific's merger of the Oregon Short Line, of the Pennsylvania's absorption of the Northern Central, and so on. The real situation as regards the earnings of a subsidiary company can not be disclosed without a knowledge of the earnings of its parent company and of other subsidiary companies in the same system. It will be noted in the revised tabulation that in a number of instances the earnings of the parent or owning company are not disclosed in the original tabulation of the railroads presented before this committee.

We have prepared some exhibits to present to the committee showing exactly the effects of the arrangement of these roads, presented by the railroads in this large exhibit, by grouping the roads first according to the stock ownership.

In Exhibit A we have taken all of the roads on these three large sheets and have grouped them according to ownerships. Under the Pennsylvania Railroad you will find 11 companies that were presented on the railroads' exhibit separately and apart from ownership. You will see there the variation—I am assuming now for the mathematical problem the figures presented by the railroads; I will criticize those figures later, but you can see the different impression you can get from those roads when grouped according to subsidiary roads and according to systems.

You will see, if you take the figures on the first sheet, the Ann Arbor Co., which owns the Ann Arbor Railroad and the Manistique & Lake Superior, that its earnings are not shown. The same is true of the Cripple Creek Central which owns the Cripple Creek & Colorado Springs. There is also the Canadian Pacific, which owns four roads, presented to you in the railroad exhibit, whose earnings are not shown. There is the El Paso & Southwestern Co. and the International & Great Northern Corporation, the Atlantic Coast Line Co., which owns eight roads; the Illinois Central, the Richmond-Washington Co. There is the Grand Trunk Railway of Canada, which has six roads in the list whose earnings are not shown; the Reading Co., whose earnings are not shown; and on the last page you will find the Alabama, New Orleans, Texas & Pacific Junction Railways Co. (Ltd.), without its earnings.

The earnings of any of those subsidiary companies can not present the real situation to this committee unless the earnings of the holding companies also are shown.

I have made certain groupings of the roads presented by the railroads, and those of roads controlled by construction and industrial companies, four of the roads on the exhibit presented by the railroads are owned by the United States Steel Corporation. Its earnings are not shown. One of these roads, the Duluth & Iron Range, is owned by the Minnesota Iron Co., whose earnings are not shown, and this iron company in turn is owned by the Federal Steel Co., whose earnings are not shown, and this company in turn is owned by the United States Steel Corporation, whose earnings are not shown. The

same is true of the Lehigh & New England and the Lehigh & Hudson River, both of those roads being owned by the Lehigh Coal & Navigation Co., whose earnings are not shown. The same is true of the Utah Copper Co. owning the Bingham & Garfield, and the Cherokee Construction Co. owning the Midland Valley.

Now, as to the question of roads in the hands of receivers, you will find 27 of the railroads presented in the exhibits are in the hands of receivers, or were recently in the hands of receivers. Their earnings are very low.

Senator GORE. Just what do you mean by that?

Mr. WARNE. Twenty-seven of the total number of the railroads. I think the total number is 159, and 27 of those 159 were recently in the hands of receivers.

Senator GORE. What 159 do you speak of?

Mr. WARNE. The total number of roads in the exhibit presented by the railroads on their three sheets is 159. Naturally the earnings of roads in the hands of receivers are low.

Senator POMERENE. In that connection, have you the information which would enable you to state reasons for which they are in the hands of receivers?

Mr. WARNE. That could be easily ascertained, Senator, but I have not compiled it. This grouping that I have made has been based on Poor's Manual for 1917, but if it is important enough to the committee I will supply it.

Senator POMERENE. I would be better able to tell what conclusions you are drawing from this statement of facts.

Mr. WARNE. The only conclusion I am drawing, primarily at first, is to impress the committee with the fact that a proper conception of the earnings of these roads is better ascertained by a different grouping than it is by putting them all together and trying to get out an average earning of 5.11 per cent; that if you take roads in the hands of receivers, naturally, their earnings are very low; but there may be definite and distinct reasons why they are in the hands of receivers which should not be attached to companies that are making, we will say, fair earnings, because by grouping these bankrupt roads in with other roads you lower, necessarily, the average earnings of those other roads.

These three groupings of the roads leaves 33 of the 159 of the railroads presented by the exhibit of the railroads in what I call independent companies. I mean by that they are not under the control of any of the systems. Some of them are systems themselves.

There is another thing I might call your attention to—I have not had time to analyze it sufficiently to find out—as to whether all of the important railroads of the United States are included in this exhibit of the railroads. But I found by accident that the Southern Railway was not there, and I do not know whether or not any other important roads are not included.

Mr. THOM. I will state there were certain roads from which we did not get any returns, and those, of course, were omitted. We put in all we did have any returns from.

(The Exhibits A, B, C, and D referred to are here printed in full, as follows:)

EXHIBIT A.

Roads grouped according to stock ownership, 3-year averages.

Road.	Net operating income.	Property investment.	Per cent.
Pennsylvania Railroad.....	\$46,382,852	\$846,523,658	5.48
Baltimore, Chesapeake & Atlantic.....	45,394	4,186,783	1.16
New York, Philadelphia & Norfolk.....	999,103	10,566,687	9.19
Cumberland Valley.....	1,298,202	10,420,968	12.46
Long Island.....	3,187,404	80,384,106	3.97
Philadelphia, Baltimore & Washington.....	3,787,440	75,115,111	5.04
West Jersey & Seashore.....	3,081,252	21,627,178	4.44
Pennsylvania Co.....	14,814,421	236,489,862	6.26
Grand Rapids & Indiana.....	944,743	23,113,776	4.09
Toledo, Peoria & Western ¹	158,504	10,029,946	1.58
Pittsburgh, Cincinnati, Chicago & St. Louis (includes Vandalia).....	11,375,084	224,457,345	5.07
New York Central.....	55,972,807	919,502,504	6.09
Lake Erie & Western.....	1,678,807	43,680,573	3.84
Michigan Central.....	9,073,874	146,135,571	5.52
New York, Chicago & St. Louis.....	2,134,612	66,965,760	3.19
Rutland ²	1,029,450	23,080,440	4.48
Pittsburgh & Lake Erie.....	9,071,679	61,834,965	14.67
Monongahela.....	583,174	12,353,471	4.72
Toledo & Ohio Central.....	1,098,283	26,875,137	4.09
Kanawha & Michigan.....	1,305,229	20,016,940	6.52
Cleveland, Cincinnati, Chicago & St. Louis.....	9,998,008	190,016,428	5.26
Cincinnati Northern.....	325,553	4,532,019	7.18
Baltimore & Ohio.....	25,348,113	547,842,127	4.63
Pittsburgh & West Virginia.....	298,704	46,707,119	.64
Staten Island Rapid Transit.....	346,040	7,580,786	4.56
Chesapeake & Ohio.....	13,268,096	231,563,982	5.73
Hocking Valley.....	2,668,017	43,954,788	6.07
Ann Arbor Co.: Ann Arbor Railroad.....	531,583	17,404,824	3.05
Manistique & Lake Superior.....	24,891	1,438,417	1.73
Chicago & Northwestern.....	23,405,992	381,542,655	6.13
Chicago, St. Paul, Minneapolis & Omaha.....	4,970,796	76,267,674	6.52
Cripple Creek Central: Cripple Creek & Colorado Springs.....	549,075	10,544,953	5.21
Canadian Pacific: Minneapolis, St. Paul & S. Ste. Marie.....	10,445,395	182,018,063	5.74
Spokane International.....	192,604	10,198,633	1.89
Duluth, South Shore & Atlantic.....	594,780	48,349,534	1.23
Mineral Range.....	147,307	3,523,119	4.18
El Paso & Southwestern Co.: El Paso & Southwestern.....	4,237,117	52,833,436	8.02
International & Great Northern Corporation: International & Great Northern.....	1,423,702	39,460,201	3.61
Kansas City, Mexico & Orient.....	37,908	22,028,719	.17
Kansas City, Mexico & Orient of Texas.....	3,010	6,527,848	0.08
Atlantic Coast Line Co.: Charleston & Western Carolina.....	487,001	8,380,405	5.81
Atlantic Coast Line Railroad.....	10,351,243	179,819,029	5.76
Louisville & Nashville.....	17,310,665	278,070,522	6.23
Georgia Railroad.....	884,551	4,526,195	(¹)
Louisville, Henderson & St. Louis.....	341,404	7,666,826	4.48
Nashville, Chattanooga & St. Louis.....	3,212,321	37,583,962	8.55
Western Railway of Alabama.....	294,737	5,828,025	5.05
Chicago, Indianapolis & Louisville.....	632,272	39,925,179	4.09
Illinois Central.....	16,549,399	301,361,500	5.49
Central of Georgia.....	3,388,244	68,854,256	4.92
Mississippi Valley Co.: Yazoo & Mississippi Valley.....	3,900,363	62,904,315	6.20
Richmond-Washington Co.: Richmond, Fredericksburg & Potomac.....	1,195,905	8,846,133	13.52
Washington Southern.....	490,249	8,330,187	5.99
Southern Pacific.....	47,636,196	956,211,005	5.01
Northwestern Pacific ⁴	1,224,164	60,905,531	2.01
New Orleans, Texas & Mexico.....	211,925	15,556,996	1.36
Beaumont, Sour Lake & Western.....	80,291	4,229,379	1.90
St. Louis, Brownsville & Mexico.....	993,246	15,544,732	6.39
Toledo, St. Louis & Western.....	1,000,761	39,501,310	2.53
Chicago & Alton.....	3,211,453	121,610,372	2.64
Detroit & Toledo Short Line ⁵	461,179	4,632,333	9.96

¹ Owned jointly with the C. B. & Q.² 50 per cent owned by the New Haven.³ Deficit.⁴ Property investment of Georgia Railway not available. Figures shown include only net expenditures for betterments to leased property. Rate or return not computed and figures omitted from total.⁵ Control is joint with Southern Railway.⁶ Owned jointly with the Atchison, Topeka & Santa Fe.⁷ Owned jointly with Grand Trunk Western.

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Roads grouped according to stock ownership, 3-year averages—Continued.

Road.	Net operating income.	Property investment.	Per cent.
Grand Trunk Railway of Canada:			
Atlantic & St. Lawrence.....	1 \$ 2,069	\$9,007,096	1.02
Chicago, Detroit & Canada Grand Trunk Junction.....	194,798	3,481,350	5.00
Detroit, Grand Haven & Milwaukee.....	125,234	7,086,727	1.78
Grand Trunk Western.....	1,115,483	34,239,735	3.28
Central Vermont.....	756,882	17,008,834	4.45
Detroit & Toledo Shore Line *.....	461,179	4,632,233	8.98
Reading Company:			
Atlantic City.....	227,967	9,527,352	2.39
Central Railroad of New Jersey.....	9,367,288	132,777,668	7.05
Philadelphia & Reading.....	16,042,462	195,345,644	8.21
Port Reading.....	188,379	4,816,136	3.91
New York, New Haven & Hartford.....	17,499,450	291,143,332	6.01
Central New England.....	1,493,320	26,631,839	5.61
New York, Ontario & Western.....	2,099,903	90,469,116	2.22
Rutland *.....	1,029,450	23,080,440	4.46
Boston Railroad Holding Co.:			
Boston & Maine.....	9,820,057	204,413,544	4.80
Wabash.....	5,804,034	200,052,151	2.90
Wabash, Pittsburgh Terminal Ry. Co.—			
Wheeling & Lake Erie.....	1,605,996	69,628,331	2.31
Pittsburgh Terminal R. R. & Coal Co.—			
West Side Belt.....	189,832	5,333,644	2.58
Alabama, New Orleans, Texas & Pacific Junction Railways Co. (Ltd.):			
Alabama & Vicksburg.....	342,983	5,537,571	6.19
Vicksburg, Shreveport & Pacific.....	356,413	9,013,267	2.95
Atchison, Topeka & Santa Fe.....	42,398,406	688,749,805	6.16
Northwestern Pacific *.....	1,224,184	80,965,531	2.01
St. Louis Southwestern.....	3,398,024	70,950,212	4.79
St. Louis Southwestern of Texas.....	561,541	30,029,113	1.87
Union Pacific System.....	38,567,303	573,885,057	6.72
St. Joseph & Grand Island.....	369,025	18,425,401	2.00
Great Northern.....	29,063,329	433,599,361	6.70
Northern Pacific.....	30,690,489	489,457,224	6.27
Spokane, Portland & Seattle.....	1,840,391	61,125,669	3.01
Chicago, Burlington & Quincy.....	34,008,045	494,507,851	7.02
Toledo, Peoria & Western *.....	158,304	10,029,946	1.98
Quincy, Omaha & Kansas City.....	31,416	6,468,954	.49
Colorado & Southern.....	2,502,493	82,238,700	3.04
Fort Worth & Denver City.....	1,886,241	25,245,533	7.47
Trinity & Brazos Valley *.....	1,238,907	11,663,611	12.06
Wichita Valley.....	150,009	5,478,677	2.74

¹ Deficit.

² Owned jointly with Toledo, St. Louis & Western.

³ 50 per cent owned by the New York Central.

⁴ Owned jointly with the Southern Pacific.

⁵ Owned jointly with the Pennsylvania Company.

⁶ In hands of receiver. Owned jointly with Rock Island.

EXHIBIT B.

Roads controlled by construction and industrial companies, 3-year averages.

Road.	Net operating income.	Property investment.	Per cent.
United States Steel Corporation:			
Bessemer & Lake Erie.....	\$4,745,188	\$46,967,219	10.10
Elgin, Joliet & Eastern.....	2,732,657	41,989,323	6.51
Duluth, Missabe & Northern.....	5,374,561	37,975,004	14.15
Federal Steel Co.—			
Minnesota Iron Co.—Duluth & Iron Range.....	2,413,243	27,329,835	8.83
Lehigh Coal & Navigation Co.—			
Lehigh & New England.....	1,154,357	13,772,892	9.38
Lehigh & Hudson River.....	525,314	6,213,194	8.45
Utah Copper Co.—			
Bingham & Garfield.....	1,206,721	6,872,337	17.56
Cherokee Construction Co.—			
Midland Valley.....	446,605	17,541,228	1.55

EXHIBIT C.

Roads recently or at present in hands of receiver, 3-year averages.

Road.	Net operating income.	Property investment.	Per cent.
Atlanta, Birmingham & Atlantic.....	\$358,376	\$38,467,001	0.93
Chicago, Peoria & St. Louis.....	167,865	8,267,715	2.03
Chicago, Rock Island & Pacific.....	15,074,232	319,181,430	4.72
Chicago, Rock Island & Gulf.....	971,223	17,439,994	8.57
Trinity & Brazos Valley ¹	238,907	11,663,611	2.05
Cincinnati, Hamilton & Dayton (Inc. C. I. & W.).....	1,082,550	55,238,877	1.96
Colorado Midland ²	24,466	15,041,472	0.16
Denver & Salt Lake.....	336,920	26,945,119	1.25
Fort Smith & Western.....	82,171	11,662,042	0.70
Gulf, Mobile & Northern ³	562,364	23,220,541	2.42
Missouri & North Arkansas.....	13,775	18,001,294	0.08
Missouri, Kansas & Texas.....	5,889,730	170,363,565	3.46
Missouri, Kansas & Texas of Texas.....	619,678	65,485,295	0.95
Missouri, Oklahoma & Gulf.....	63,702	11,737,163	0.71
Missouri Pacific.....	14,346,131	324,208,653	4.42
New Orleans, Texas & Mexico.....	211,925	15,556,398	1.36
Pere Marquette.....	3,758,969	91,618,914	4.10
Pittsburg, Shawmut & Northern.....	512,470	35,603,351	1.44
St. Louis—San Francisco ⁴	13,453,378	286,113,393	4.70
Chicago & Eastern Illinois.....	3,001,026	80,749,949	3.72
Fort Worth & Rio Grande.....	1,892	8,097,543	0.02
St. Louis, San Francisco & Texas.....	216,807	10,314,420	3.07
San Antonio, Uvalde & Gulf.....	66,119	4,757,613	1.18
Tennessee Central.....	163,753	19,717,991	0.83
Texas & Pacific.....	4,138,784	110,182,255	3.76
Toledo, St. Louis & Western.....	1,000,761	39,501,310	2.53
Western Pacific.....	1,897,506	83,078,392	2.28

¹ Owned jointly with Colorado & Southern.² Deficit.³ One-half of stock owned by Denver & Rio Grande.⁴ Formerly New Orleans, Mobile & Chicago.⁵ Includes Brownwood North & South and Paris & Great Northern.

EXHIBIT D.

Independent companies, 3-year averages.

Road.	Net operating income.	Property investment.	Per cent.
Arizona & New Mexico.....	\$302,645	\$4,504,258	6.72
Atlanta & West Point.....	259,838	3,798,580	6.84
Buffalo, Rochester & Pittsburgh.....	3,275,017	59,535,704	5.50
Buffalo & Susquehanna R. R. Corporation.....	594,620	10,632,427	5.58
Carolina, Clinchfield & Ohio.....	1,615,619	58,552,914	2.76
Chicago Great Western.....	2,976,371	167,836,612	1.77
Chicago, Milwaukee & St. Paul.....	27,343,308	580,348,423	4.71
Chicago, Terre Haute & Southeastern.....	931,342	24,861,261	3.75
Coal & Coke.....	281,251	8,311,032	3.38
Delaware & Hudson.....	7,526,294	103,022,797	7.31
Delaware, Lackawanna & Western.....	15,989,315	212,033,142	7.54
Denver & Rio Grande.....	8,351,140	175,913,464	4.75
Detroit & Mackinac.....	314,158	6,505,052	4.83
Detroit, Toledo & Ironton.....	205,362	21,730,991	0.95
Erie System.....	16,874,521	472,679,980	3.57
Florida East Coast.....	2,353,888	47,826,901	4.92
Gulf & Ship Island.....	603,097	14,168,200	4.26
Kansas City Southern.....	3,546,351	81,195,069	4.37
Lehigh Valley.....	10,635,073	204,188,110	5.16
Los Angeles & Salt Lake ¹	3,414,343	77,693,910	4.39
Louisiana & Arkansas.....	408,715	12,096,769	3.38
Louisiana Railway & Navigation Co.....	361,697	20,849,415	1.73
Maine Central.....	2,954,085	57,715,375	5.19
Minneapolis & St. Louis.....	2,642,611	67,879,614	3.89
New Orleans Great Northern.....	577,356	16,071,807	3.59
Norfolk & Western.....	20,918,830	264,732,101	7.90
Norfolk Southern.....	1,178,171	31,023,401	3.80
San Antonio & Aransas Pass.....	373,125	24,212,173	1.54
Seaboard Air Line.....	6,484,649	176,523,516	3.66
Texas Midland.....	43,675	2,751,264	1.59
Ulster & Delaware.....	123,596	5,772,995	2.14
Virginian.....	3,270,017	87,747,661	3.73
Western Maryland.....	3,090,247	119,767,915	2.58

¹ Reorganization of San Pedro, Los Angeles & Salt Lake. Oregon Short Line owns one-half of stock.

Before proceeding with my criticism of the statistical exhibit of the railroads, I should like to clear up one point. It is commonly ~~stated and quite generally believed that there is no relation between~~ net operating income and property investment or capital obligations. Theoretically this is true. But in the actual operation of a railroad the expenses of operation in general are affected by the fact that there must be at least a certain net operating income at the end of the year with which to meet charges of the property investment account and capital obligations. In a real practical sense the practice of a road year by year comes to be such in regard to a net operating income as is determined by the knowledge that certain property investment and capital charges of the corporation are to be met out of that income.

Briefly, the operating income of the railroads in these exhibits are the result of the fact that there do exist in these roads certain property investment and certain capital obligations. That is very strikingly illustrated in the 1914 Rate case. When that case was first started by the railroads, the prospects were for very low earnings for that year, and they started the case before the commission when there was a relative business depression. Before the case came to trial industrial prosperity came and the earnings of the railroads jumped by leaps and bounds. If they had gone before the Interstate Commerce Commission with the same operating and maintenance expenses that they had previously had, they would have shown before that commission in that advance rate case the highest net operating income in their history. The way they did present the statistical result was by spending it on maintenance of equipment and way and structures—in other words, the maintenance of equipment and way and structures were larger than any year in the history of these railroads and statistical charts were prepared showing the tendency of those two accounts toward a remarkable jump in that one year. Otherwise the net operating income of the roads would have been so large that, as a practical problem, there would not have been much chance for the Interstate Commerce Commission to increase rates.

In general, the property-investment account of the railroads is the same as that of road and equipment of the Interstate Commerce Commission. In the reports of the carriers to this Federal body it is required of them that this account shall include the accounting company's investment in road and equipment, including that held under contract for purchase, in existence at the date of the balance sheet. This requirement was first made of the railroads in 1907 and the reports to the commission usually show the accumulation of such investments up to that time and subsequently. It is important, however, to recognize the fact that up to June 30, 1907, the great majority of the American railroads did not base their investment in road and equipment on cost.

Mr. William E. Hooper, associate editor of the *Railway Age*, in his book "Railroad Accounting" (p. 235), says:

The figures that were given were in most instances derived figures. A group of men decided to build a railroad. They got together certain franchises, options on right of way, etc. They then issued a certain amount of stock with a nominal par value and borrowed money, issuing bonds secured by a mortgage or some other form of indenture on the property, which they turned over to the

company. When the books of the company were opened the property which was turned over to it was entered on the debit side of the balance sheet as the first asset, not at what it cost anybody in money, but at a figure expressed in dollars and cents, which corresponded with the nominal par value and face value of the total securities issued.

In consequence of this method of constructing a balance sheet that was in common use by the American railroads up to 1907, the figures reported by the roads to the commission as property investment necessarily contain errors of great importance.

It is with no desire to muckrake or to criticize the railroads that we call attention to these errors. Reference will not be made to all of them in detail, but only a sufficient number of illustrations have been selected to indicate to you the character of the property investment account which has been submitted to this committee as a basis for measuring the return to the railroads during governmental operation.

The cost of construction as given by the books of the Baltimore & Ohio Railroad is not probably of much significance, says the Interstate Commerce Commission in its report on the Advance Rate case of 1910:

The system is made up of a great number of smaller properties constructed as independent lines. According to our understanding, the cost of construction, as shown by the books of the Baltimore & Ohio, is simply an aggregate of that shown by the books of these subsidiary companies and under the circumstances could hardly represent the actual fact.

In 1899 the Baltimore & Ohio was reorganized and taken out of the hands of the receivers.

There is nothing before us—

Says the commission—

to show the terms of the reorganization. There was no foreclosure sale, and whatever was done in the way of changing or scaling securities was by agreement. It does not appear what the \$152,000,000 of common stock actually represents nor what it cost the owners of that stock by the terms of the reorganization. The capital account materially exceeds the cost of production, as shown by the books of the company, and the per mile capitalization strikes us as rather high.

The Cincinnati, Hamilton & Dayton, located in a territory of constantly growing traffic, was mismanaged by financiers and was exploited by them for speculative purposes during several years prior to 1905, when it was placed in the hands of receivers.

The commission further says:

The receivership was not closed until in 1909, when the Baltimore & Ohio Railroad Co. was induced to assume control of the Cincinnati, Hamilton & Dayton. This involved advances by it in cash aggregating approximately \$22,000,000 to meet the maturing notes and current needs of the Cincinnati, Hamilton & Dayton; it also involved the guaranty by the Baltimore & Ohio of a large part of the inflated securities of that company. The sums so advanced have been carried in the accounts of the Baltimore & Ohio as assets, and, until the fiscal year 1913, the interest due on the advances was credited to the income account of the Baltimore & Ohio. The consequences to its income and surplus from this unfortunate alliance were therefore not shown in the annual reports of the Baltimore & Ohio to its stockholders or in its reports to this commission. Nor do they appear in the statistics offered by the Baltimore & Ohio in this proceeding (referring to the 1914 Advance Rate case) to show its need of greater revenues. The burden proved, however, to be so great that the management of the Baltimore & Ohio recently determined to withdraw its aid, and the Cincinnati, Hamilton & Dayton has again passed into the hands of receivers. The income account of the Baltimore & Ohio for 1914 will begin to show this drain.

The Interstate Commerce Commission, although unable to secure complete information of the financial affairs of the Louisville & Nashville, nevertheless feels itself justified by the facts of which it does have knowledge to state officially that the cost of road account of this company "is heavily burdened with charges which do not represent actual construction cost."

From incomplete information it is concluded that "at least \$16,000,000 shown in the cost of road account covers items which should not be charged as a part of the costs of this carrier's road." A stock dividend of 100 per cent was declared by the Louisville & Nashville on October 6, 1880. According to a corporate history of this railroad, which was found in its office, 10 stock dividends were declared by this company between 1860 and 1891. To make possible the stock dividend of 100 per cent referred to, the amount of surplus was arbitrarily increased by raising the book value of certain assets. The commission states that permanent improvements on the Louisville & Nashville have, in the past, to a large extent, been made out of earnings and subsequently charged to the capital account. (Interstate Commerce Commission in its report on the financial relations of the Louisville & Nashville Railroad Co., p. 170.)

It seems appropriate at this point to call attention to certain facts incident to the issuance of capital stock and the acquisition of property by the Nashville, Chattanooga & St. Louis, a subsidiary of the Louisville & Nashville. The issued capital stock of this carrier, says the commission, amounts to \$16,000,000, par value, of which \$15,984,787.50, par value, is outstanding. It appears that cash aggregating only about \$9,831,840.77 was received for this stock, while an amount exceeding \$8,107,398.50 was given to stockholders in the form of stock dividends, and by the sale of stock at prices below par, and also below market value. Included in this amount is the stock dividend of 200 per cent on the outstanding capital. The dividend as originally declared amounted to \$4,324,032.96, which was charged to the carrier's property-investment account as an offset to the carrier's liability for stock issued from which no funds were derived.

I do not desire to burden this committee with a recital of all the individual and particular acts of the railroads that have tended to make their present property investment of little value in determining fair and just earnings. The history of American railroads are replete with such transactions. If the committee so desires, however, innumerable other illustrations can be submitted from the official records of investigations of the New York Central, the Pennsylvania, the New Haven, the Rock Island, the Pere Marquette, the St. Louis & San Francisco, the Erie, and so on indefinitely.

Let me next explain the successive steps in the development of the authority of the Interstate Commerce Commission to deal with the accounting practices of the railroads.

This is important because it explains to a certain extent the property investment account of the railroads to-day.

As originally enacted the act to regulate commerce required interstate carriers to file annual reports with the commission covering specifically defined items. It also provided that the commission, in its discretion, might prescribe a uniform system of accounts for carriers subject to its jurisdiction. But the act contained no provision for the enforcement of the orders of the commission in such matters.

This defect was remedied by the amendments of 1906, which not only prescribed penalties for the violation of the rules and regulations of the commission, but established a process by mandamus for enforcing its orders. It also provided for a force of examiners having authority to inspect the accounts, records, and memoranda of carriers. This gave to section 20 a vitality that was heretofore lacking and put the commission in a position effectively to administer the law respecting the accounts of interstate carriers.

Beginning with the year 1888, the steam railroads were required to render annual statistical reports of their operations on blanks provided for the purpose by the commission. So far as mere form was concerned these reports were therefore uniform. They did not inspire public confidence, however, because the commission, as just stated, was then without effective authority for the enforcement of any accounting rules had such rules been promulgated. It is true that classifications of operating expenses were issued in 1888 and reissued in revised form in 1892. There was also a classification of expenditures for construction. But these classifications were not issued under order and all the commission could do to secure their observance was to request the carriers to comply with them in order, as far as possible, to secure uniformity in their reports to the commission.

Immediately after these defects in the act were corrected by the Hepburn amendment of 1906, the commission entered actively upon the work of formulating a system of accounts for steam railroads. The cooperation of the railroads through their association of accounting officers was enlisted, and the result was that three important classifications were issued under an order of the commission on June 3, 1907, to become effective on July 1 following. These were the classification of operating expenses, the classification of operating revenues, and the classification of road equipment expenditures.

It is not our purpose here to discuss the principles underlying these classifications. It will suffice to say that one of the points in greatest need of regulation from an economic point of view, as disclosed by previous delinquencies in the accounting of railroad companies, was the drawing of a direct line between expenditures for property and expenditures for operation. The need of such a distinction in railroad accounts is elementary; nevertheless, all students of railroad economics are well aware of the fact that, prior to 1907, when the commission was given real power to control such matters, the accounts of carriers in many cases were influenced more by other considerations than by a desire to reflect the actual facts. A financially strong road making large net earnings would not hesitate to conceal the facts by adding to its operating expense accounts sums dispersed in improving property; on the other hand, a financially weak road, seeking to enhance its credit by a good showing of operating results, would include in its property accounts sums expended in operation. The result was that a carrier's annual and monthly statements of net revenue often reflected nothing more than the particular showing desired by its executive. These reports were often used for speculative purposes, and the stockholders and the general public were left without any assurance as to whether the dividends declared were paid from income or surplus or out of capital.

A correct statement of the property account of a carrier is of scarcely less importance than a correct statement of its expenditures for operation. It is our understanding that prior to 1907, when the commission had no efficient control over such matters, the accounts representing the cost of road of many steam railway companies had substantially no real significance, except as they demonstrated the utter disregard of all accounting principles. As a rule they represented neither investments nor assets. Although described as "cost of road and equipment," they frequently bore no relation whatever to cost. They often included at par value large amounts of stock issued as premiums to promoters and investors in bonds or held in the treasury of the issuing company, in the hope that the future growth of the company's traffic, or the exigencies of corporate control, might give them some value. But in promulgating its classification of expenditures for road and equipment in 1907, at which time the commission was given effective authority to prescribe a system of accounts and to enforce its observance, the fundamental rule laid down by the commission was that all entries in the accounts of a carrier under that head should be in

terms of cash only, thus showing what it cost to create the property at 100 cents on the dollar. The general basis for the rule was that a correct statement of the investment is the beginning of correct accounting; and this sound principle gives us a balance sheet statement of cost that is a record of the actual investment.

Notwithstanding this more rigid control of the accounts of the carriers there have been important instances of serious departures from its accounting regulations. One of these was the Chicago, Milwaukee & St. Paul and its subsidiary, the Chicago, Milwaukee & Puget Sound, reported upon by the Commission.

In the case of the anthracite carriers, technically known as No. 4914, In the Matter of Rates, Practices, Rules, and Regulations Governing the Transportation of Anthracite Coal (35 I. C. C.), the carriers submitted statistics showing their investment in road and equipment and in working capital, their net operating income, and the ratios of net operating income to investment for a number of years, just as they have done in the present instance before this committee. The report of the commission said:

Most of the large railway systems of this country were made up by consolidating and merging many lines of railway which started as independent companies. Other lines came under the control and domination of an operating company at fixed rents or rates of compensation payable on their securities by the operating company. The tendency has been for the great systems to acquire control of their poorly placed, indifferently operated, or isolated feeders or competitors, not at their original cost, but at a cost either higher or lower than the constructive cost. They have often been purchased at receivers' sales for much less than their original cost, and the loss was borne by the original investors.

The investment shown in the carriers' statements does not represent cost of property nor an approximate figure of cost, so we will dismiss from further consideration the question as to the cost of the properties to the operating company or the present owners.

At the outset of this inquiry, in December, 1912, the commission endeavored to ascertain from the carriers the cost of the properties used by these carriers in their operations, but we were informed by the several carriers in January, 1913, that their books did not contain that information, and not one of them was in a position to show the cost of their property. The reasons advanced for this were that the construction books of the original lines were not in the possession of the present operating companies, and that the figures in the old books were not translatable into the cost of property as defined in the present classification of accounts, as well as many other reasons showing the impossibility of ascertaining property costs.

In the Five Per Cent case (31 I. C. C. 351), the commission expressed its dissatisfaction with the property investment as presented by the railroads. The figures presented in that case included the property investments of the several respondents in the case of the anthracite carriers. During the proceedings in the latter case, the commission decided to ascertain the character of the property investment as presented by these carriers, so far as it was possible without unduly delaying the determination of the case. It directed the commission's examiners to make a brief examination of the carriers' books and ascertain, so far as it was possible, the character of the costs submitted to it as representative of property costs.

The results of these examinations made during the hearings show that the statement of Reading Railway property costs contained items aggregating \$38,000,000, which represented operating deficits, bonus stock issued, arbitrary write ups of road accounts, cost of securities which apparently had no value but which were charged off

to road account, and similar items which had been included in the book accounts of the property costs, all of which inflated the cost of road and equipment as shown in the carriers' books, but did not actually represent expenditures for road and equipment. Most of these items were included in the road prior to 1907. Obviously, says the commission, present day rates should not be expected to earn a return on property costs inflated by the inclusion of such items.

Senator ROBINSON. We usually adjourn at 5 o'clock. How much longer will it require, in your opinion, to complete your statement?

Mr. WARNE. If you adjourn at 5 o'clock, I would rather take it up in the morning, if possible.

(Thereupon, at 5 o'clock p. m., the committee adjourned to meet at 10 o'clock a. m. Thursday, January 24, 1918.)



GOVERNMENT CONTROL AND OPERATION OF RAILROADS.

THURSDAY, JANUARY 24, 1918.

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE COMMERCE,
Washington, D. C.

The committee met, pursuant to adjournment, at 10.30 o'clock a. m., in the hearing room of the committee, Senate Office Building, Senator Ellison D. Smith presiding.

The CHAIRMAN. The committee will come to order. Dr. Warne, you may continue your testimony.

STATEMENT OF DR. FRANK J. WARNE—Resumed.

Mr. WARNE. At the conclusion of the hearing yesterday I was discussing the report of the Interstate Commerce Commission on its investigation of the property investment accounts, net operating income, and per cent return, relating the income to the investment account, in the Anthracite Coal-Carriers' case, and I had reached the point where I had described what the Interstate Commerce Commission had found through its examiners as to the elements in the property investment accounts of these carriers.

It had been shown that the Reading Railway property costs contained items aggregating \$38,000,000, which represented the operating deficits, bonus stock issued, arbitrary write-ups of road accounts, cost of securities which apparently had no value but which were charged off to road account, and similar items which have been included in the book accounts of the property costs, all of which inflated the cost of road and equipment as shown in the carriers' books, but did not actually represent expenditures for road and equipment. Most of these items were included in the road prior to 1907. "Obviously," says the commission, "present-day rates should not be expected to earn a return on property cost inflated by the inclusion of such items."

The commission found the following items in the property investment account of other roads.

The CHAIRMAN. What report of the commission are you reading that from?

Mr. WARNE. This is in the Five Per Cent case (31 I. C. C., 351).

Other amounts included in cost of road as shown by "road account" were: For the Pennsylvania, cost of coal-producing lands, \$1,642,149, on which no income had been received in recent years, and bonus stock, \$1,565,527; for the Lackawanna, bonus stock, \$426,355, discounts and commissions on securities, \$795,329; for the Cen-

tral Railroad of New Jersey, an arbitrary write-up of cost of road, \$2,757,643.

"As the carriers, by amended exhibits or upon their briefs, have adopted these reductions from their property costs," says the commission, "and as a reduction of \$33,000,000 has been made in the cost of the property of the New York, Ontario & Western Railway, the property costs in the instant case differ from the property costs presented in the Five Per Cent case."

In the Five Per Cent case (32 I. C. C., 328) the commission stated that the property-investment accounts as now standing on the books of the carriers can not be accepted as accurately representing the fair value of their property devoted to serving the public.

It further said [reading]:

The evidence shows that the road account, now designated "cost of road," was used prior to 1907 as a general clearing account into which was charged valueless and uncollectible items and liabilities which could not conveniently be absorbed into other accounts.

Property costs deduced from the old books of these carriers are not reliable. The fault is back of the books. This is well illustrated by the cost of construction of the Port Reading Railroad, which the carriers' experts have ascertained from its books to have been \$3,025,000. This railroad is of recent construction, being completed in the year 1894. The commission's examiners found, by their reviews of the construction contracts and records, that the actual cost of constructing this railroad was \$1,525,000, and that the book cost includes \$1,500,000 representing a bonus payment in securities to the construction company. Such practices were so prevalent in railroad construction in former years that we must regard property costs deduced from the old books as very unreliable.

The construction accounts promulgated by the commission lay down the rule that all charges to property should be the money value and not the debt value of the transactions recorded. This means that so far as construction accounts are controlled by the commission's orders, the "cost of property," which is the first item on the asset side of the balance sheet, must be the cost in money and not the cost in debt. "The beneficial effect of this rule," says the commission in its annual report, "is limited by the fact that the jurisdiction of the commission does not extend to construction companies, nor does there seem to be any feasible means, without further legislation, of controlling charges to the property accounts of a carrier which represent a lump sum for the purchase of constructed properties."

The accounting rule promulgated by the commission further provides that all additions and betterments, regardless of the source from which the money to pay for such additions and betterments may be derived, shall be made a charge to the property account. The purpose of this rule is to prevent the accumulation of what have sometimes been called "secret reserves," and thus obviate the danger of having these reserves restored to the books at some future time and made the basis of speculative manipulations. This was not the practice prior to 1907.

The present accounting orders of the commission also require that all additions and betterments paid for out of revenues, rather than from the proceeds of securities sold, should be set up on the liability side of the balance sheet as a specific item. But this was not the practice prior to 1907. This rule does not decide, but it st

least raises the question of the equity in value of such improvements. "Is this an equity of the stockholder or of the public?" asks the commission.

The railroads are now required to state in their statistical returns to the commission the cost of their properties. If this account were correctly kept, it would show the money expended from the first in building and equipping the railroad.

"In point of fact, this item is not reliable," says the commission in its report in No. 3400, *Advance in Rates, Eastern Case* (pp. 257-259).

The present railroad systems in official classification territory have usually been formed by the combination of a large number of smaller railroads, which were built as independent properties. The Baltimore & Ohio system, for example, embraces more than 100 such properties. The only information which the present system has of the original cost of construction is that derived from the books of the various companies which have been absorbed. These books were seldom accurately kept, and often represent as money what was, in fact, something else. The beginnings of this account, therefore, are very imperfect and unreliable.

The balance sheet—

Says the annual report of the Interstate Commerce Commission (pp. 75-76)—

is, perhaps, the most important of the statements that may be drawn from the accounts of corporations, for, if correctly drawn, it contains not only a classified statement of corporate assets and corporate liabilities but it provides in the balance—that is to say, the "profit and loss"—a quick and trustworthy measure of the success that has attended the operation and management of the property. Every balance sheet begins with "cost of property," against which is set a figure which purports to stand for the investment. This is no place to enter upon an extended criticism of the practice of American railways in the matter of their property accounts, nor is such a criticism necessary for the purpose in hand. It is sufficient to refer to the well-known fact that no court or commission or accountant or financial writer would for a moment consider that the present balance-sheet statement purporting to give the "cost of property" suggests, even in a remote degree, a reliable measure either of money invested or of present value. Thus, at the first touch of critical analysis the balance sheets published by American railways are found to be inadequate. They are incapable of rendering the service which may rightly be demanded of them.

I might suggest to the committee that if it is sufficiently interested, it can find out from investigations already finished by the valuation department of the Interstate Commerce Commission the actual difference between property investment of the railroads examined and their present value, as determined by the commission. I think 10 roads have been finished.

I want now briefly to take up the economics of this control as relating to present conditions and as affecting the railway employees. The control of one railroad company by another has usually been brought about without the investment of a single dollar of new capital by the controlling road. It has simply extended its credit.

For illustration, the New York Central until recently owned a large part of the stock of the Lake Shore & Michigan Southern, and still owns stock of the Michigan Central.

For the purpose of acquiring and paying for this stock, collateral mortgages were issued with the stock as security, the mortgages aggregating about \$110,000,000. This amount should, therefore, be subtracted from the funded debt in order to show that portion of the debt which really stands against the operated lines of the New York

Central. In many cases subsidiary roads have been acquired wholly out of earnings of the parent company.

In ninth Interstate Commerce Commission report (pp. 382, 417) the commission, in considering the financial condition of the Lake Shore & Michigan Southern Railway, said (reading) :

The Lake Shore & Michigan Southern on June 30, 1901, owned a majority of the capital stock of its competitor, the New York, Chicago & St. Louis Railroad Co., a majority of the capital stock of its connection, the Pittsburgh & Lake Erie Railroad Co., almost one-half of the capital stock of the Lake Erie & Western Railroad Co., and \$11,224,000 of the capital stock of the Cleveland, Cincinnati, Chicago & St. Louis Railway Co., besides smaller holdings in other companies. These stocks had been acquired, in addition to the payment of dividends, not less than 6 per cent for many years, out of net earnings. During the year 1902 it purchased, apparently out of surplus, \$4,728,200 of the capital stock of the Indiana, Illinois & Iowa Railroad Co., the entire capital being \$5,000,000.

If you carry that process to a logical conclusion, it is not impossible for one railroad company to secure control of the capital stock of every railroad corporation in the United States out of earnings in addition to a fair return upon its investment.

Against the stocks of the acquired road as security, the purchasing company issues collateral trust bonds.

"A railroad company," says the Railroad Securities Commission, "buying the stock of another company almost always issues collateral trust or other bonds to pay for it. In other words, it puts the stock into its own treasury and sells the bonds to the public." In brief, the purchased road is made to pay for itself through its own stock.

One result of this practice is the wholesale investment on a credit basis of the corporate funds of one railroad in stocks of other companies. To-day these collateral trust bonds form the most important class of funded indebtedness outside of the ordinary simple mortgage—they constitute as much as one-tenth of the total funded indebtedness of the railroads. What is of special significance is the fact that this huge sum of \$1,183,000,000 has in large part come into existence since 1898. The relation between the total amount of stocks and bonds and that of the relative increase, which results from making the former security for the latter, becomes a matter of prime importance.

For a brief few minutes I am going to make a rather dry, technical, statistical presentation. I trust you will have patience with that presentation, because from the facts presented certain conclusions are to be drawn that we consider of very great importance.

The total gross capitalization of all the railroads in the United States is approximately \$20,247,000,000. More than one-half of this—57 per cent—amounting to \$11,566,542,000, is funded debt, consisting principally of various kinds of bonds. The remaining 43 per cent of the total capitalization is stock, amounting to \$8,680,460,000.

This gives the proportion to total capital of 57 per cent for funded debt and 43 per cent for stocks.

The relative tendency over the intervening years has been an increase in bonds compared with stocks. That is, of the total capital bonds hold relatively a more important position to-day than in 1891; consequently stocks hold a less important position to-day than they did 26 years ago.

In what is known as the Lake Cargo Coal case, and the Fifteen Per Cent case, being a controversy before the Interstate Commerce Commission in the matter of coal rates to the Lakes, a chart was there presented showing the tendency of all these factors. I tried to secure that chart to bring to the committee before I came here this morning, but the Government has commandeered most of my office space, and it has been lost in moving, and I was unable to find it, but I can draw the deductions from that chart in a description.

By 1904 the tendency in the rate of increase from 1891 for all three funds was in general the same—each had increased 42 per cent—although during the 13 years there had been periods of fluctuations in the rate of increase of each of the three elements. From 1891 to and including 1894 the amount of funded debt increased slightly faster than that of stocks. Starting about even again in 1895, the rate of increase in stocks runs ahead of that in funded debt during the following eight years to and including 1903. Starting even again in 1904, the rate of increase in funded debt for the 10 succeeding years outstripped that of stocks. During the past 24 years total capital increased 118 per cent, funded debt 139 per cent, and stocks 95 per cent.

Twenty-six years ago railway corporations owned the stock of other similar companies to the extent of \$945,288,000. In 1914, the latest year for which I have secured official information, the stock so owned amounted to \$2,639,000,00. Here is an increase of 179 per cent—nearly three times in 1914 what it was in 1891.

While this is an important fact, it does not convey the idea completely, for while the amount now owned is much larger than in 1891, still it is possible that in proportion to the total amount of such stock issued, it might be no greater in the latter than in the earlier period. Relating these two facts—the increase in the total amount of stock and of railway ownership of this stock—while the former increased at the rate of only 95 per cent the latter increased 179 per cent. In 1891 railway ownership of stock was only 21 per cent of the total stock; in 1914 it was more than 30 per cent.

Another related fact will assist in forming a mental concept of the conditions. Railway stock is divided, according to ownership, into two groups—that owned by the railroads themselves and that held in the hands of the public. Twenty-six years ago the public owned this stock to the extent of \$3,505,421,000. To-day the amount thus owned is \$6,041,976,000. Here is a rate of increase of railway stock in the hands of the public of only 78 per cent. It has already been stated that the rate of increase in the total stock in this period was 95 per cent, so that the increase in railway stock owned by the public has been less rapid than the increase in the total stock. In 1891 nearly 79 per cent of railway stock was in the hands of the public; in 1914 less than 70 per cent was so held.

While the rate of increase of railway stock in the hands of the public has been only 72 per cent during the past 24 years, railway ownership of this stock has been at the rate of 179 per cent. From control of one-fifth of all the stock in 1891 railway ownership has increased nearly one-third; from 79 per cent of the stock in 1891 ownership by the public has decreased to 70 per cent.

The conclusion is that in recent years the railway corporations have been acquiring stock issues of like transportation companies at a much more rapid rate than has the public.

Another striking and important idea which a study of statistics of the Interstate Commerce Commission emphasizes is the period at which this movement of railway ownership of railway stock began. From 1891 to 1898 the tendency of the three separate movements was not very different from one another. But, starting in 1898, the amount of stock owned by railroads began to mount and to leave far behind the other two, until the very wide difference between them at the present time is reached. For the seven years from 1891 the total stock outstanding increased 21 per cent and the stock owned by railroads 12 per cent. But from 1897 to 1914 the stock outstanding increased 62 per cent, while railway ownership of this stock increased 148 per cent. The year 1898, then, marks the beginning of the movement that to-day finds over 30 per cent of the entire issues of railway stock held and controlled by the railroads themselves. A study of the proportion of the total railway stock held by railway corporations each year since 1891 shows that in 1897 it was less than in 1891, being, respectively, 21.2 and 19.8 per cent. But in 1914 the proportion owned was as much as 30.4 per cent. The year in which railway ownership shows the lowest proportion of all the 24 years is 1897.

In building from related facts the idea of railway control of railway capital, which it is desired to impress upon this committee, it is essential to direct attention for the moment to the bond feature of railway security issues. Of the total bonds or funded debt outstanding for all the railroads of the United States (amounting to \$11,566,542,000 in 1914) only \$1,849,424,000 is owned by railway corporations themselves. This is railway ownership of only 16 per cent of the bonds. As to stocks, it was found that the railroads own more than 30 per cent.

Railway control being secured primarily through stock and not through bond ownership, the latter playing relatively an insignificant part in this control, we have at once the explanation why railway corporations are in possession of railway stock to a much greater extent than they are of bonds. Investment for a direct financial return in the way of interest or dividends not being the primary object of this railway control, we do not in consequence find funded debt issues in the treasuries of controlling corporations to the extent that we find stock issues. Even in those cases where one corporation owns the stock of another, the former usually holds little or none of the funded debt of the latter.

Considering the distribution of funded debt as between railway corporations and the public, an entirely different situation is found to exist from that of a like distribution of railway stocks. In the hands of the public there is \$84 out of every \$100 of the funded debt of the railroads of the United States. As to stocks held by the public, we have already seen that it is not quite \$70 out of every \$100.

In 1898 the amounts of railway stocks and bonds owned by the public were nearly equal, \$4,236,000,000 of stock, and \$4,271,000,000 of bonds. Sixteen years later there had come about a serious disproportion—\$6,041,976,000 of stocks and \$9,717,118,000 of funded debt.

These illustrations indicate that this railway ownership of the capital stock of other railway companies is much more extensive than the facts available indicate, startling as even these available facts are.

The striking, and in many ways remarkable, change in railway bonds and stocks in the hands of the public, which change has been more marked in recent years, is also very important as reflecting the extent to which the credit of our railroads is being pledged. No one thing is more responsible for this tendency than the growth and widespread application of the system of intercorporate holdings. By virtue of its facility for the issuing of collateral trust bonds, this plan or method of ownership control has unquestionably been a dominating factor in bringing about this disproportionate ownership by the public and the railroads as between stocks and bonds.

This tendency has public significance also, in that it has resulted in a disproportionate growth of fixed interest-bearing obligations, caused by the issuance of bonds in payment for the stocks of the roads acquired. The result is greater financial rigidity, which prevents the corporation from readily adjusting itself to changing economic conditions. I do not say this tendency would not have existed, assuming that there was to have been railway consolidation anyhow and in some form; but I do say that very likely it would not have been so striking or fraught with such alarming consequences as those that now confront the American people.

Why? Assuming for the present the value of railway stock to be what it represents on its face, the leading systems have purchased literally thousands of millions of dollars of the stock of other railway companies. Against these stock holdings they have issued interest-bearing securities also to an enormous total amount.

On the bonds—the paper assurances of indebtedness—the corporation must pay a specified sum of money at a given date and, in the meantime, interest at stated times. If it does not, its physical property is likely to be taken over by the holders of the bonds.

On the stock—the paper assurances of participation in earnings—the corporation is presumed to pay dividends, but this is not legally compulsory; it is at the discretion of the company's directors, and if the dividends are not paid, the stockholders have not the recourse to a receivership that is open to the bondholders if interest is not paid.

This difference between the stocks of a railroad company and its bonds is of great importance. It is further explained in the report of the Railroad Securities Commission as follows (reading):

A certain sum has been paid in, and the holder of the stock has a certain share in the ownership of the property of whatever value that may prove to be. The second of these things is what ultimately gives the stock certificate its value. In the case of a railroad bond, the fact that it calls for \$100 or \$1,000 is a determining factor in what it is worth. But in the case of stock, the fact that the certificate represents \$100 or \$1,000 is far from being the determining factor. It is but one incident among many. Even in theory it purports merely to show that this was the amount originally paid by the subscriber when the road was built. It does not create an obligation to pay its face value, nor does that face represent its money value as a share. The value varies with the development of the property as a whole.

If it has been wisely located and well managed, it will be worth more than the amount it represents. If it has been unwisely located, or badly managed, it will be worth less than the amount it represents. The shareholder chose his investment, elected his management, and took his risks. If he acted un-

wisely and fares badly he has no claim that the public should indemnify him. If he did well, the public can not either rightly or wisely fail to recognize and reward his foresight, so long as his road is managed with proper regard to the interest of the community and for the development of the traffic which it carries.

The principal of a bond is a fixed sum, its interest a fixed charge. The value of a share of stock is essentially variable, its profit essentially indeterminate.

There is a persistent tendency to ignore this distinction; to emphasize unduly the face value of the stock; to treat the shares in a railroad or other public-service corporation as claims against the community for the number of dollars they represent, rather than as fractional interests in a more or less hazardous enterprise, in which the investors took risks of loss and chances of profit.

Stock pays dividends to the holding company when business is good and traffic abundant on the lines of the subsidiary that issued it. With these dividends the holding company meets the interest charges on its bonds which it has issued on the basis of the stock. Usually the dividend rate of return is higher than the interest rate. This being so, the holding company has, on the surface, made a good investment—it receives, say, a 5 per cent dividend on the stock, out of which it pays, say, a 4 per cent interest on the bonds. Here is an apparent profit of 1 per cent annually on the transaction.

So far, so good.

But this practice of one company issuing collateral trust and other bonds to pay for the stock of another company changes contingent charges, which are flexible, into fixed charges, which are more rigid and constant.

As long as times are good and industry prosperous, this is not a bad situation.

Let an industrial depression set in, however, as it has at times during the past decade and as it is likely to do in future years. Traffic then falls off, and with this shrinkage of business earnings decline. Expenses can not be reduced in proportion. There is now not enough money from the rate receipts with which to meet the expenses of operation and also to pay these dividends on the stock.

What does the subsidiary company do?

It has to keep in operation and it must meet these operating expenses, such as wages and salaries, maintenance of way and structures and equipment, cost of materials, and the like. Dividends, however, are not a legally enforceable liability. Their payment annually is not essential to the continued operation of the property. A company can refuse to pay dividends on its stock and the stockholder has no redress at law. Interest on bonds, however, must be paid or the bondholder can have recourse to the courts—interest payments can not be “passed” without the probability of bankruptcy. The only choice left to the subsidiary company when earnings are low is to stop the payment of dividends, so dividends on the stock are “passed.”

With the subsidiary company “passing” its dividend payments the holding corporation has no return upon the stock it purchased—the source from which it expected to meet the interest charges on its bonds has been cut off. In the case of some railway holding companies their only source of revenue is the dividends on stocks owned. In the case of the New York Central it receives in dividends from subsidiary companies a larger total amount than it pays out in dividends to its own stockholders. Heretofore, under conditions where many individuals were the stockholders, and not another railroad the

single or at least the largest stockholder, such a default in dividend payment would have been distributed among these individuals; now, its effect is concentrated upon a single corporation. Even a threatened default of interest payments on bonds is sufficient to disturb credit and to cause a temporary loss of confidence; it may even precipitate a widespread financial crisis.

What then?

To save the stockholding companies from default in interest on their bonds and from a receivership the railway presidents echo the cry of the large bondholders that freight rates must be increased. This is the "crisis" the public has been hearing so much about from the railway presidents, directors, and financiers in the recent Advance Rate cases. In fact, it is the cause of those rate cases.

With the stocks of subsidiary railway companies pledged as security for issues of bonds; with these pledges prohibiting the sale of these stocks, except in the event of default upon the bonds; with such default usually warded off only by the receipt of dividends from the stock; and with a shrinkage in traffic threatening and in cases cutting off these receipts—why, of course, the holding companies face a crisis.

Every industrial depression tends under these conditions to bring the holding corporation—and we have seen how numerous they are and what an important place they hold as to the capstone of our railway systems—it tends to bring them to the brink of a financial "crisis"; to force them face to face with actual bankruptcy.

Hence the alarm of the railway presidents when traffic begins to decline.

Hence their scurry to the Interstate Commerce Commission in 1910, in 1914, and in 1917 for increases in rates to bolster up earnings.

Hence the inability of the Commerce Commission to pass upon the justness and reasonableness of rates in the way that was intended by Congress when it conferred upon this national body that authority.

Hence the partial reversal in December, 1914, by the Commerce Commission of its decision in July in the Advance Rate case of that year.

Hence the dangerous situation which the American people are facing to-day in this problem, which the ownership of railway stock by other railroads has forced upon them.

The fact is that our railway structure to-day rests upon a foundation of sand, which the slightest bad weather will undermine—it is a house of cards, which an ill wind will blow over—carrying widespread national financial ruin in its wake. The American investor in railway securities is sleeping over a volcano.

The effects of the situation just described upon the railway employees is that of practically bonding the stock of the American railroads. It is taking a large volume of fluid capital and making a situation where almost legal demands are upon that stock to pay dividends. It forces the holding companies in self-preservation to, in every instance where it is possible, compel every subsidiary company to pay dividends in order to receive the money for the support of these bonds.

I intended to proceed from that idea to a discussion of the actual holders of the stock, but I have probably trespassed enough on the

time of this committee, and unless it is particularly interested in a discussion of the groups or of the type of individuals in the community that own these stocks I will end my discussion here. I wish merely to say this as regards the question of wide distribution of stock among the American people. It is a bugaboo that is not true. Along with this tendency for the purchase of railway stock by railway companies there has gone a concentration of the ownership of railway stock in the hands of very few individuals.

Senator UNDERWOOD. May I ask you a question right there?

Mr. WARNE. Yes, sir.

Senator UNDERWOOD. It has been claimed, and I have never seen it denied, that a large portion of these securities are held by the savings banks, trust companies, and insurance companies of America that hold the savings of the American people, and that therefore the people generally are interested in these securities. What statement have you in reference to that?

Mr. WARNE. I should say, in connection with that, speaking generally of savings banks and insurance companies, that their investment in railway bonds is relatively insignificant compared with their total investments.

Senator UNDERWOOD. Have you any figures on that?

Mr. WARNE. No; I have not; nor have I ever seen any compilation by the railroads showing the investment of security companies and banks in their stocks and bonds. If one insurance company with policyholders numbering millions, we will say, happens to have stock in American railroads, it does not make those 1,000,000 policyholders in that insurance company stockholders in the railroad.

Senator UNDERWOOD. No; but the point has been made. Surely, they are not stockholders, but the point has been made that this legislation is very necessary to sustain credit, because if the railroad securities are jeopardized it jeopardizes these savings concerns, or life insurance companies, savings banks, and therefore there is a serious injury to a vast number of the American public. I have heard that statement made a great many times.

Mr. WARNE. Neither this committee nor Congress can be held responsible for any investments made by any individuals, nor any corporations, in railroads. They are presumed to know that this Congress has the absolute power of regulation of railroads, that it has that power to the extent, if necessary, of cutting down the earnings of the railroads, and any corporation or individual investing in railroad stocks must be presumed to have that knowledge; and it can not place the Government in a position of guaranteeing any investments in any railway security.

Senator UNDERWOOD. That is true, except on the general proposition that Congress, of course, wants to maintain sound and safe business conditions throughout the country and does not want to do anything that would jeopardize that.

Mr. WARNE. Certainly.

Senator UNDERWOOD. But the question I was trying to bring out is not the policy but the question of fact concerning these statements.

Mr. WARNE. It is unquestionably true, Senator, that insurance companies and savings banks have investments in railway securities. The extent of it I do not know.

Senator McLEAN. I think Mr. Elliott states in his book on the subject that something over 10 per cent of the entire stock and bonded indebtedness of the railroads is held by the insurance companies and savings banks.

Mr. WARNE. That includes both bonds and stocks?

Senator McLEAN. Yes.

The CHAIRMAN. You do not know of any source from which the committee could get the information as to what per cent, or what is the total amount, of railroad securities held by savings banks and trust companies, do you?

Mr. WARNE. I do not, Senator. I have not seen any information anywhere, and I have been searching for it for the last five or six years because we have constantly had to meet that contention of the railroads.

The CHAIRMAN. Senator Underwood is developing the idea that if that be true, it has been permitted under the policy, and perhaps under the principle, of regulation that we have had up to the present; and if a great amount of this is held and would jeopardize the financial condition of this country by panicky conditions, no matter how much we might find that the principle upon which this situation has been brought about is wrong, and we desire to correct, why, it would be the part of wisdom to correct it in such a manner as not to precipitate a worse condition than the principle involved that brought it about.

Mr. WARNE. The interest of insurance companies and savings banks in railway stock is not a speculative interest. It has been made, if at all, for the purpose of investment. Whatever action the committee or Congress might take affecting the market value has no relation whatever to the investment value in those securities; and if this committee takes the position that its power over the regulation of railroads is to be interfered with or held up because the exercise of that power is going to injure certain individual stockholders, it is not going to get anywhere with the railroad problem.

Senator GORE. That would really subordinate the sovereign power of Congress.

Mr. WARNE. Exactly. It would hinder and handicap the exercise of that constitutional power by the Government for fear you might indirectly hurt individuals. In connection with that point, here is a table that I have prepared which may be of interest.

(The table referred to is here printed in full, as follows:)

Proportion of total stock held by 10 leading stockholders in principal railway systems, 1915.

Name of road.	Total stock outstanding.	Stock held by ten leading stockholders.	Per cent.
Pennsylvania R. R.....	\$506,457,848	\$27,327,000	5.40
Baltimore & Ohio.....	210,811,885	45,923,100	21.78
New York Central.....	249,593,514	69,967,700	28.03
New Haven.....	157,117,900	21,386,500	13.61
Philadelphia & Reading.....	42,481,700	42,481,631	100.00
Frie.....	176,271,300	37,409,300	21.22
Delaware & Hudson.....	42,503,000	3,644,600	8.57
Delaware, Lackawanna & Western.....	42,291,120	13,039,300	30.83
Chesapeake & Ohio.....	62,786,000	12,166,900	19.38
Norfolk & Western.....	131,146,200	64,577,600	49.24

Proportion of total stock held by 10 leading stockholders in principal railways, systems, 1915—Continued.

Name of road.	Total stock outstanding.	Stock held by ten leading stockholders.	Per cent.
Western Maryland.....	\$39,428,066	\$37,672,100	63.39
Wabash.....	92,104,127	.....	64.35
Lehigh Valley.....	60,608,000	9,835,559	16.39
Southern Railway.....	185,650,200	87,576,900	47.17
Illinois Central.....	109,291,717	38,562,600	35.31
Atlantic Coast Line.....	68,754,700	26,105,100	37.97
Seaboard Air Line.....	60,913,500	25,017,100	57.46
Denver & Rio Grande.....	87,775,670	47,496,700	54.11
Missouri, Kansas & Texas.....	76,369,857	29,447,900	38.56
Missouri Pacific.....	82,702,585	10,735,100	12.96
Chicago, Milwaukee & St. Paul.....	233,201,900	23,371,400	10.02
Chicago, Rock Island & Pacific ¹	74,875,200	14,166,300	18.92
St. Louis & San Francisco.....	90,671,762	.....	.....
Union Pacific.....	321,835,100	50,192,800	15.60
Northern Pacific.....	247,946,000	31,038,600	12.53
Grand Trunk Western.....	6,000,000	6,000,000	100.00
Chicago, Burlington & Quincy.....	110,839,100	110,040,100	99.28
Southern Pacific.....	272,674,406	53,573,800	19.65
Great Northern.....	249,129,982	31,222,000	12.53
Chicago & North Western.....	152,509,500	24,391,400	15.99
Canadian Pacific in Maine.....	2,273,000	.....	.....
Atchison, Topeka & Santa Fe.....	314,663,230	34,078,100	10.83

¹ In hands of receiver.

Mr. WARNE. This table shows the total amount of stock in these large railway systems that is held by the 10 leading stockholders, and I have here a list of the 10 leading stockholders in every important railway system in the United States, showing the par value of the stock they held, the number of votes each is entitled to in the board of directorates, and the per cent that these 10 hold to the total.

I might hurriedly read some of these summarized percentages.

The CHAIRMAN. Also give the name of the company.

Mr. WARNE. In the Pennsylvania Railroad the 10 leading stockholders own 5.40 per cent of the total stock.

In the Baltimore & Ohio the 10 leading stockholders own 21.78 per cent.

In the New York Central the 10 leading stockholders own 28.03 per cent.

In the New Haven Railroad, 13.61 per cent.

The Philadelphia & Reading, 100 per cent.

In the Erie, 21.22 per cent.

In the Delaware & Hudson, 8.57 per cent.

Senator KELLOGG. One moment about the Philadelphia & Reading. Its stock is held by a holding company, is it not?

Mr. WARNE. Yes.

Senator KELLOGG. But the stock of the Reading Co. is not in that condition.

Mr. WARNE. That is not reported by the Interstate Commerce Commission. You will find, too, Senator, that the larger owners of stock in these companies are usually other railroads.

In the Erie, 21.22 per cent of the total stock is owned by the 10 leading stockholders.

In the Delaware & Hudson, 8.57 per cent.

In the Delaware, Lackawanna & Western, 30.83 per cent.

In the Chesapeake & Ohio, 19.38 per cent.

In the Norfolk & Western, 49.24.

The Western Maryland, 63.39.

Wabash, 64.55.

Lehigh Valley, 16.39.

Southern Railway, 47.17.

Illinois Central, 35.30.

Atlantic Coast Line, 37.97.

Seaboard Air Line, 57.49.

Denver & Rio Grande, 54.11.

Missouri, Kansas & Texas, 38.59.

Missouri Pacific, 12.98.

Chicago, Milwaukee & St. Paul, 10.02.

Chicago, Rock Island & Pacific, 18.92.

St. Louis & San Francisco at the time this table was prepared was in the hands of a receiver, and I have no information on that.

Union Pacific, 15.60.

Northern Pacific, 12.52.

Grand Trunk Western, 100 per cent.

Chicago, Burlington & Quincy, 99.28 per cent.

Southern Pacific, 19.65 per cent.

Great Northern, 12.53 per cent.

Chicago & North Western, 15.99 per cent.

Atchison, Topeka & Santa Fe, 10.83 per cent.

Senator KELLOGG. As to that, of course, a great many of those it is perfectly evident, like the Denver & Rio Grande, which is owned by the Missouri Pacific.

Mr. WARNE. Yes.

Senator KELLOGG. And like the Reading, which is owned by the Reading Co.

Mr. WARNE. Yes.

Senator KELLOGG. And like the Illinois Central, in which the Union Pacific has about 29 per cent of the stock.

Mr. WARNE. Yes.

Senator KELLOGG. But it is a fact, also, that in some of these lines the stockholders, or the owners, are represented by trustees. For instance, at one time all the Dutch ownerships in this country were generally listed in the name of a bank or trust company or certain trustees. There is some of that also.

Mr. WARNE. That is true; yes, sir.

Senator KELLOGG. The real ownership being vested in a large number of people. Take the Pennsylvania Railroad. It has been stated that its actual ownership—I will not pretend to say exactly—but my recollection is that they have over 50,000 stockholders.

Mr. WARNE. Almost 100,000 stockholders to date. On that point, Senator, if the principle followed by the Pennsylvania Railroad were followed by the other railroads of the country, I doubt if you would have any railway problem. That is not saying that there are not criticisms of the Pennsylvania Railroad. There are. But as to the operating, financial, and corporate organization of the Pennsylvania Railroad, its organization is such, I believe, as regards its relation to the public interest, that if other roads were similarly organized you would not have this trouble.

The reason the Pennsylvania Railroad has such a large number of stockholders is simply this: When they purchased the stock of a sub-

subsidiary company they issued against it a bond which permits the holder of that bond to transfer it back for stock in the Pennsylvania Railroad. The New York Central and most companies when they buy the subsidiary issue a collateral bond, which can not be turned into stock of the parent company, and that explains why the Pennsylvania Railroad to-day has such a large number of separate and individual stockholders.

Senator KELLOGG. The New York Central has a very large number of stockholders.

Mr. WARNE. If you will permit me, I think the New York Central has 38,000; I am not sure. I have a list in my office, but I could not find it this morning.

Senator GORE. I wish you would attach that list to your statement.

Mr. WARNE. I will, Senator, if I can find it.

(The statement referred to is here printed in full, as follows:)

Ten leading stockholders.

Stockholder.	Address.	Par value of stock held.	Number vote to which entitled.
PENNSYLVANIA R. R., 1916.			
Henry C. Frick.....	New York City.....	\$7,566,350	151 37
Duveen Bros.....	do.....	3,425,900	68 518
Trustee Adams Express Co.....	do.....	3,160,000	63 200
Girard Trust Co., trustee ¹	Philadelphia, Pa.....	2,625,000	52 512
Mary M. Emery.....	Cincinnati, Ohio.....	2,525,000	50 500
Mutual Life Insurance Co.....	New York City.....	1,750,000	35 000
Direct der Disconto ²	London, England.....	1,724,200	34 44
Morton F. Plant.....	New York City.....	1,600,000	32 000
W. W. Astor.....	do.....	1,566,950	31 339
Fahnestock & Co.....	do.....	1,343,000	27 660
Total for 10 leading stockholders.....		27,327,000	546 540
Total for Pennsylvania R. R.....		506,457,848	10,129 15 ³
Per cent of amount of stock held by 10 leading stockholders to total stock outstanding, 5.40.			
BALTIMORE & OHIO R. R., 1915.			
Deutsche Bank ⁴	Berlin, Germany.....	18,494,800	194 943
Union Pacific R. R. Co.....	New York City.....	5,400,100	54 001
Robert Garrett & Sons.....	Baltimore, Md.....	4,168,800	41 688
Oregon Short Line R. R. Co. ⁴	New York City.....	3,862,000	38 620
Maatschappij ⁵	Amsterdam, Holland.....	3,791,800	37 918
Swiss Bankverein.....	Basel, Switzerland.....	2,911,200	29 112
Mary W. Harriman.....	New York City.....	2,380,200	23 802
Mary F. Jacobs.....	Baltimore, Md.....	1,750,000	17 500
Charles W. Harkness.....	New York City.....	1,671,000	16 710
Speyer Bros.....	London, England.....	1,484,200	14 822
Total for 10 leading stockholders.....		45,923,100	459 231
Total for Baltimore & Ohio R. R.....		210,811,885	2,108 119
Per cent of amount of stock held by 10 leading stockholders to total stock outstanding, 21.78.			
NEW YORK CENTRAL, 1915.			
Oregon Short Line.....	New York City.....	20,000,000	200 000
New York State Realty & Terminal.....	do.....	18,436,000	184 360
W. K. Vanderbilt.....	do.....	12,590,400	125 904
John Axten.....	do.....	5,525,000	55 250
Charles W. Harkness.....	do.....	3,600,000	36 000
Northern Finance Corporation.....	do.....	2,400,000	24 000
Fahnestock & Co.....	do.....	1,740,000	17 400
Alice G. Vanderbilt et al., trustees.....	do.....	1,666,300	16 663

¹ Trustee under will of J. J. Emery.

² Direction der Disconto Gesellschaft.

³ While this stock stands in name of Deutsche Bank, the certificates are indorsed to bearer and held by a large number of individuals.

⁴ Owned by the Union Pacific.

⁵ Maatschappij tot Beheer van het Administratiekantoor van Amerikaansche Fondsen: opgericht door Broes & Gosman, Ten Have & Van Essen en Jarman & Zoonen te Amsterdam.

Ten leading stockholders—Continued.

Stockholder.	Address.	Par value of stock held.	Number votes to which entitled.
NEW YORK CENTRAL, 1915—continued.			
Fredrick W. Vanderbilt.....	New York City.....	\$1,501,000	15,010
Lorence A. V. Twombly.....	do.....	1,500,000	15,000
Total for 10 leading stockholders.....		69,976,700	699,677
Total for New York Central R. R.....		249,563,514	2,495,935
Per cent of amount of stock held by 10 leading stockholders to total stock outstanding, 1915.			
NEW HAVEN, 1915.			
Pennsylvania R. R. Co.....	Philadelphia, Pa.....	5,312,500	53,125
American Express Co.....	New York City.....	4,032,400	40,324
Mutual Life Insurance Co.....	do.....	3,564,000	35,640
Trustees, Adams Express Co.....	do.....	2,473,000	24,730
New York Central R. R.....	do.....	1,545,800	15,458
Dominick Bros. & Co.....	do.....	1,395,000	13,950
Parney, Chas. D. & Co.....	do.....	980,000	9,800
Plant, M. F.....	do.....	750,000	7,500
Stor, William Waldorf.....	do.....	684,000	6,840
White, George R.....	Boston, Mass.....	650,000	6,500
Total for 10 leading stockholders.....		21,386,500	213,865
Total for New Haven R. R.....		157,117,900	1,571,179
Per cent of amount of stock held by 10 leading stockholders to total stock outstanding, 1915.			
PHILADELPHIA & READING, 1915.			
Central Trust Co. of New York ¹	New York City.....	42,476,700	449,534
Reading Co.....	Philadelphia, Pa.....	3,750	75
George F. Baker.....	New York City.....	150	3
Henry C. Frick.....	do.....	150	3
Alfred H. Smith.....	do.....	150	3
W. T. Stotesbury.....	Philadelphia, Pa.....	150	3
Theodore Voorhees.....	do.....	150	3
Joseph Widener.....	Elkins Park, Pa.....	150	3
Daniel Willard.....	Baltimore, Md.....	150	3
George M. Dallas.....	Philadelphia, Pa.....	50	1
Total for 10 leading stockholders.....		42,481,550	449,631
Total for Philadelphia & Reading R. R.....		42,481,700	449,634
Per cent of amount of stock held by 10 leading stockholders to total stock outstanding, 1915.			
ERIE R. R., 1915.			
Isaiah & Sons, R.....	London, England.....	5,682,000	56,820
Leseltine Powell & Co.....	do.....	5,116,700	51,167
Luggins & Clarke.....	do.....	5,023,500	50,235
Leon Bros.....	do.....	4,974,000	49,740
Wyphand & Co., J. W.....	New York City.....	4,291,500	42,915
Wyphand & Co., S.....	London, England.....	3,599,500	35,995
Raymond Pyncheon & Co.....	New York City.....	2,926,100	29,261
Brown, F. Gordon, Jr.....	do.....	2,000,000	20,000
Logan & Co., J. S.....	London, England.....	1,905,100	19,051
Lewis & Co., Henry.....	New York City.....	1,890,900	18,909
Total for 10 leading stockholders.....		37,409,300	374,093
Total for Erie R. R.....		176,271,300	1,762,712
Per cent of amount of stock held by 10 leading stockholders to total stock outstanding, 1915.			
DELAWARE & HUDSON, 1915.			
Vilber, George I.....	Oneonta, N. Y.....	600,300	6,003
Larriman, Mary W.....	New York City.....	600,000	6,000
Stor, William W.....	do.....	409,500	4,095
Anford, John.....	Amsterdam, N. Y.....	354,800	3,548
Lawrence & Sons, Cyrus J.....	New York City.....	328,000	3,280
Wall, George P.....	do.....	310,000	3,100
Hitz Gerald, Mary A.....	do.....	300,000	3,000

¹ Central Trust Co. of New York as trustee under mortgage of Reading Co. and the Philadelphia & Reading Coal & Iron Co. dated Jan. 5, 1897.

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Ten leading stockholders—Continued.

Stockholder.	Address.	Par value of stock held.	Number votes to which entitled
DELAWARE & HUDSON, 1915—continued.			
Voorhees, Elizabeth R.	Clinton, N. J.	\$300,000	3.42
Brady, Anthony J. (estate of)	New York City	242,000	2.42
Hemenway, A. ¹	Boston, Mass.	200,000	2.10
Total for 10 leading stockholders		3,644,600	23.44
Total for Delaware & Hudson R. R.		42,503,000	425.72
Per cent of amount of stock held by 10 leading stockholders to total stock outstanding, 8.57.			
DELAWARE, LACKAWANNA & WESTERN, 1915.			
George F. Baker	New York City	4,039,650	80.79
W. K. Vanderbilt	do.	2,795,000	55.90
Eugene Higgins	do.	1,026,450	20.52
Estate of Moses Taylor ²	do.	977,500	19.55
Fahnestock & Co.	do.	921,850	18.43
Amos F. Eno	do.	965,000	19.30
Estate of Frank Work	do.	575,000	11.50
Henry Graves ³	do.	637,000	12.74
M. Taylor Payne	do.	562,500	11.25
Wm. H. Moore	do.	539,350	10.78
Total for 10 leading stockholders		13,039,300	260.78
Total for Delaware, Lackawanna & Western R. R.		42,291,120	445.82
Per cent of amount of stock held by 10 leading stockholders to total stock outstanding, 30.83.			
CHESAPEAKE & OHIO, 1915.			
Arabella D. Huntington	New York City	3,660,000	34.60
Robert Gibson	do.	2,060,000	20.60
Vernon C. Brown & Co.	do.	1,120,000	11.20
Henry E. Huntington	do.	1,000,000	10.00
Algemeene Trust Maatschappij	Amsterdam, Netherlands	946,000	9.46
Huggins & Clarke	London, England	759,400	7.59
J. Japhet & Co.	do.	723,000	7.23
W. B. Davids	New York City	700,000	7.00
Raymond Pyncheon & Co.	do.	618,500	6.18
J. B. Duke	do.	580,000	5.80
Totals for 10 leading stockholders		12,166,900	121.69
Totals for Chesapeake & Ohio R. R.		62,876,000	627.62
Per cent of amount of stock held by 10 leading stockholders to total stock outstanding, 19.38.			
NORFOLK & WESTERN, 1915.			
Pennsylvania R. R.	Philadelphia, Pa.	42,167,900	421.67
Pennsylvania Co.	Pittsburgh, Pa.	8,190,500	81.90
Henry C. Frick	do.	7,234,400	72.34
Hulm Edey & Co.	New York City	1,311,000	13.11
Maatschappij ⁴	Amsterdam, Holland	1,203,000	12.03
Frank M. McElroy	Pittsburgh, Pa.	1,000,000	10.00
Samuel J. Steele	Philadelphia, Pa.	920,500	9.20
Brown Bros. & Co.	New York City	950,300	9.50
A. J. Cassatt	Philadelphia, Pa.	800,000	8.00
Home Insurance Co.	New York City	800,000	8.00
Total for 10 leading stockholders		64,577,600	645.77
Total for Norfolk & Western R. R.		131,146,200	1,311.46
Per cent of amount of stock held by 10 leading stockholders to total stock outstanding, 49.24.			
WESTERN MARYLAND, 1915.			
W. P. Eaton	New York City	21,378,600	213.78
B. Cutler	do.	8,238,300	82.38
E. K. Satterlee	do.	2,014,700	20.14

¹ Morris Gray and Henry L. Statutek, trustees under will of A. Hemenway.

² Cath. A. Taylor, P. R. Payne, M. T. Payne, and L. Turnure, trustees.

³ Henry Graves, Jr., and George C. Graves, trustees.

⁴ Maatschappij tot Beheer van het Administratiekantoor van Amerikaansche Fondsen, opgericht door Broes & Gosman, Ten Have & Van Essen en Jarman & Zoonen te Amsterdam.

Ten leading stockholders—Continued.

Stockholder.	Address.	Par value of stock held.	Number votes to which entitled.
WESTERN MARYLAND, 1915—continued.			
Vrenn Bros.....	New York City.....	\$1,218,000	12,180
Malgarten & Co.....	do.....	983,900	9,839
L. C. Bogert.....	do.....	829,700	8,297
W. Rice.....	do.....	810,000	8,100
V. S. Pierce.....	do.....	770,500	7,705
L. M. Lowitz.....	do.....	765,100	7,651
L. P. Jackson.....	do.....	663,300	6,633
Total for 10 leading stockholders.....		37,672,100	376,721
Total for Western Maryland Ry.....		59,428,098	594,292
Per cent of amount of stock held by 10 leading stockholders to total stock outstanding, 63.39.			
WABASH RAILROAD, 1915.			
Equitable Trust Co., trustee ¹	New York City.....	28,744,000	287,440
Estate of Jay Gould.....	do.....	6,030,000	60,300
Maatschappij Tot ²	Amsterdam, Holland.....	5,810,000	58,100
Metropolitan Trust Co.....	New York City.....	5,652,400	56,524
Valter S. Wilson.....	do.....	4,760,000	47,600
A. Boissevain & Co.....	Amsterdam, Holland.....	3,395,000	33,950
A. H. Calef.....	New York City.....	2,000,000	20,000
Japhet & Co.....	London, England.....	1,237,000	12,370
J. Slocum.....	New York City.....	1,053,300	10,538
Berlyn & Engers.....	Rotterdam, Holland.....	767,000	7,670
Totals for 10 leading stockholders.....		59,449,200	594,492
Total for Wabash R. R.....		92,104,127	1,224,004
Per cent of amount of stock held by 10 leading stockholders to total stock outstanding, 4.55.			
LEHIGH VALLEY RAILROAD, 1915.			
William H. Moore.....	New York City.....	2,000,000	40,000
Daniel G. Reid.....	do.....	2,000,000	40,000
Moore & Schley.....	do.....	1,217,500	24,350
George F. Baker.....	do.....	1,125,000	22,500
L. W. Boocock.....	do.....	775,000	15,500
Delville Securities Co.....	do.....	700,000	14,000
Tomans & Co.....	do.....	571,500	11,430
Stephen L. Searles.....	do.....	542,500	10,850
Edward F. Stotesbury.....	Philadelphia, Pa.....	504,050	10,081
American Surety Co.....	New York City.....	500,000	10,000
Total for 10 leading stockholders.....		9,935,550	198,711
Total for Lehigh Valley R. R.....		60,608,000	1,212,160
Per cent of amount of stock held by 10 leading stockholders to total stock outstanding, 16.39.			
SOUTHERN RAILWAY, 1915.			
J. P. Morgan & Co.....	New York City.....	76,574,700	765,747
Charles Lanier & Co.....	do.....		
George F. Baker, voting trustees.....	New York City.....	3,475,000	34,750
Maatschappij Tot ²	Amsterdam, Holland.....	1,375,500	13,755
Wahnestock & Co.....	New York City.....	1,318,700	13,187
Coland B. Randolph.....	do.....	1,118,200	11,182
Malgarten & Co.....	do.....	1,059,300	10,593
A. Iselin & Co.....	do.....	971,000	9,710
Adenburgh, Thalman & Co.....	do.....	924,500	9,245
Thomas Branch & Co.....	Richmond, Va.....	760,000	7,600
Peering Harvester Co ³	Chicago, Ill.....		
Total for 10 leading stockholders.....		87,578,900	875,769
Total for Southern Ry.....		185,650,200	1,800,000
Per cent of amount of stock held by 10 leading stockholders to total stock outstanding, 47.17.			

¹ Trustee for Wabash Railroad Co., refunding and extension bonds.² Maatschappij tot Beheer van het Administratiekantoor, opgericht door Broes & Cosman, Ten Have & Van Essen en Jarman & Zoonen.³ A copartnership.

Ten leading stockholders—Continued.

Stockholder.	Address.	Par value of stock held.	Number of shares to which entitled.
ILLINOIS CENTRAL R. R., 1915.			
Union Pacific R. R. Co.....	New York City.....	\$22,371,000	223,710
The Railroad Securities Co.....	do.....	9,200,000	92,000
Boissevain Bros. & Telxtrade Mattos Bros...	Amsterdam, Holland.....	3,223,500	32,235
Robert W. Goelst.....	New York City.....	1,025,000	10,250
William V. Astor.....	do.....	550,000	5,500
Mutual Life Insurance Co.....	do.....	550,000	5,500
Astor, Hon. William Waldorf.....	do.....	546,500	5,465
Mary M. Emery.....	Middletown, R. I.....	380,000	3,800
Metropolitan Museum of Art.....	New York City.....	376,000	3,760
Bertram Cutler.....	do.....	370,000	3,700
Total for 10 leading stockholders.....		38,592,000	385,920
Total for Illinois Central R. R.....		109,291,717	1,092,917
Per cent of amount of stock held by 10 leading stockholders to total stock outstanding, 35.31.			
ATLANTIC COAST LINE R. R., 1915.			
Atlantic Coast Line.....	Baltimore, Md.....	18,500,000	185,000
H. Walters.....	do.....	7,800,800	78,008
Waldo Newcumer, trustee, B. F. Newcumer, deceased.	do.....	1,825,000	18,250
Thomas Branch & Co.....	Richmond, Va.....	1,630,700	16,307
M. F. Plant.....	New York City.....	1,523,900	15,239
Safe Deposit & Trust Co., trustee.....	Baltimore, Md.....	1,304,600	13,046
Waldo Newcumer.....	do.....	1,220,000	12,200
Safe Deposit & Trust Co.....	do.....	799,500	7,995
Michael Jenkins.....	do.....	660,000	6,600
George C. Jenkins.....	do.....	600,000	6,000
Total for 10 leading stockholders.....		26,105,100	261,051
Total for Atlantic Coast Line R. R.....		68,754,700	687,547
Per cent of amount of stock held by 10 leading stockholders to total stock outstanding, 37.97.			
SEABOARD AIR LINE, 1915.			
B. Davies Warfield.....	Baltimore, Md.....	22,460,900	224,609
Estate of Sidney Shepard.....	New Haven, N. Y.....	4,091,000	40,910
Middendorf, Williams & Co.....	Baltimore, Md.....	2,742,000	27,420
Townsend Scott & Son.....	do.....	1,150,300	11,503
Norman B. Ream.....	New York City.....	947,100	9,471
Ladenburg, Thalmann & Co.....	do.....	918,000	9,180
Ogden Mills.....	do.....	700,000	7,000
Gustavus Ober.....	Baltimore, Md.....	687,400	6,874
George W. Watts.....	Durham, N. C.....	650,100	6,501
Ernest A. Smith.....	New York City.....	632,300	6,323
Total for 10 leading stockholders.....		35,017,100	350,171
Total for Seaboard Air Line.....		60,913,500	609,135
Per cent of amount of stock held by 10 leading stockholders to total stock outstanding, 57.4.			
DENVER & RIO GRANDE R. R., 1915.			
George J. Gould.....	New York City.....	13,742,000	137,420
H. L. Ueter.....	do.....	10,876,000	108,760
Maatschappij Tot ¹	Amsterdam, Holland.....	9,085,800	90,858
A. H. Calep (deceased).....	New York City.....	5,350,000	53,500
R. Raphael & Sons.....	London, England.....	1,874,000	18,740
John K. Gilliat & Co.....	do.....	1,776,900	17,769
E. T. Jeffery.....	New York City.....	1,763,500	17,635
Frank B. Cahn & Co.....	do.....	1,026,000	10,260
Utah Fuel Co.....	do.....	1,000,000	10,000
Halle & Stieglitz.....	do.....	993,000	9,930
Total for 10 leading stockholders.....		47,498,200	474,982
Total for Denver & Rio Grande R. R.....		87,775,670	877,756
Per cent of amount of stock held by 10 leading stockholders to total stock outstanding, 54.11.			

¹ Maatschappij Tot Beheer Van Het Administratiekantoor Opgerecht door Broers and Company, Tw Have and Van Essen en Jarman and Zoonen.

Ten leading stockholders—Continued.

Stockholder.	Address.	Par value of stock held.	Number votes to which entitled.
MISSOURI, KANSAS & TEXAS, 1915.			
Nederlandsche Vereniging ¹	Amsterdam, Holland.....	\$15,833,200	156,832
Iphael & Sons.....	London, England.....	3,064,000	30,540
son Bros.....	do.....	1,896,000	18,960
English Association of Bond & Shareholders.....	do.....	1,618,000	16,180
Higgins & Clocke.....	do.....	1,598,000	15,980
owitz, R. M.....	New York City.....	1,306,000	13,060
Japhet & Co.....	London, England.....	1,304,000	13,040
Frank M. Tompkins.....	New York City.....	993,000	9,930
alle & Steiglitz.....	do.....	924,500	9,245
Frank E. Cahn & Co.....	do.....	877,200	8,772
Total for 10 leading stockholders.....		29,447,900	294,479
Total for Missouri, Kansas & Texas R. R.		76,309,857	763,003
Per cent of amount of stock held by 10 leading stockholders to total stock outstanding, 1.59.			
MISSOURI PACIFIC, 1915.			
M. Lewitz.....	New York City.....	1,896,500	18,965
I. Olivia Sage.....	do.....	1,619,000	16,190
Maatschappij Tot ²	Amsterdam, Holland.....	1,319,000	13,190
Larris Winthrop & Co.....	New York City.....	1,211,100	12,111
ominick & Dominick.....	do.....	898,500	8,985
Henry Clews & Co.....	do.....	861,500	8,615
Edward C. Smith.....	Brooklyn, N. Y.....	780,800	7,808
Ernest A. Smith.....	New York City.....	760,000	7,600
alle & Steiglitz.....	do.....	738,700	7,387
John T. Milliken.....	St. Louis, Mo.....	650,000	6,500
Total for 10 leading stockholders.....		10,735,100	107,351
Total for Missouri Pacific R. R.		82,702,585	832,510
Per cent of amount of stock held by 10 leading stockholders to total stock outstanding, 1.28.			
CHICAGO, MILWAUKEE & ST. PAUL, 1915.			
Charles W. Harkness.....	New York City.....	8,100,000	81,009
George Alexander Cooper.....	England.....	4,356,500	43,565
William J. Johnston.....	New York City.....	1,980,000	19,800
Edward S. Harkness.....	do.....	1,800,000	18,000
William Rockefeller.....	do.....	1,675,000	16,750
Edwin M. Erland.....	do.....	1,169,900	11,699
J. S. Haviland.....	do.....	1,130,000	11,300
M. Telford, trustee, H. T. Dickinson.....	do.....	1,100,000	11,000
John D. Archbold.....	do.....	1,060,000	10,600
Harry W. Harriman.....	do.....	1,000,000	10,000
Total for 10 leading stockholders.....		23,371,400	233,714
Total for Chicago, Milwaukee & St. Paul.		233,201,900	2,336,368
Per cent of amount of stock held by 10 leading stockholders to total stock outstanding, 1.02.			
UNION PACIFIC R. R., 1915.			
uhn, Loeb & Co.....	New York City.....	10,645,700	106,457
Maatschappij Tot ³	Amsterdam, Holland.....	10,458,100	104,581
Harry W. Harriman.....	New York City.....	8,325,100	83,251
Arvin Hughitt ⁴	do.....	4,171,500	41,715
earson, Hammill & Co.....	do.....	3,248,000	32,480
William A. Harriman.....	do.....	3,081,300	30,813
M. Rothschild & Sons.....	London, England.....	2,760,000	27,600
W. Davis & Co.....	New York City.....	2,541,300	25,413
Robert Walton Goelet.....	do.....	2,530,000	25,300
S. Mosely & Co.....	do.....	2,431,800	24,318
Total for 10 leading stockholders.....		50,192,800	501,928
Total for Union Pacific R. R. Co.		321,835,100	3,218,351
Per cent of amount of stock held by 10 leading stockholders to total stock outstanding, .80.			

¹ Nederlandsche Vereniging ter Cehastiging Von de Sechten vose belangheffeden big Missouri, Kansas id Texas.² Maatschappij Tot Beheer van het Administratiekantoor van Amerikaansche Foudsen Opgerigt door roes and Gosman Ten Have and Van Essen en Jarman and Zoonen te Amsterdam.³ Maatschappij Tot Beheer van het Administratiekantoor van Amerikaansche Gondzen Obgerigt door roes and Gosman Ten Have and Van Essen en Jarman and Zoonen te Amsterdam.⁴ Marvin Hughitt as chairman of board of directors of the Chicago & North Western Railway Co.

Ten leading stockholders—Continued.

Stockholder.	Address.	Par value of stock held.	Number of shares to which entitled
NORTHERN PACIFIC R. R. CO., 1915.			
J. Kennedy Tod & Co.....	New York City.....	\$7,900,000	679.40
Curtiss Securities Co.....	do.....	5,601,600	54.94
Strathcona (Lord).....	do.....	2,985,200	29.55
Kidder, Peabody & Co.....	do.....	2,784,900	27.40
George F. Baker.....	do.....	2,500,000	25.00
Hobden, Bog & Molineaux.....	do.....	2,479,600	24.79
C. Ledyard Blair.....	do.....	1,730,000	17.30
John W. Sterling & John Turnbull ¹	do.....	1,709,000	17.09
Northern Finance Corporation.....	do.....	1,700,000	17.00
Cunliffe ²	London, England.....	1,648,300	16.48
Total for 10 leading stockholders.....		31,038,600	310.38
Total for Northern Pacific Ry.....		247,946,000	2,479.46
Per cent of amount of stock held by 10 leading stockholders to total stock outstanding, 12.52.			
CHICAGO, BURLINGTON & QUINCY, 1915.			
Standard Trust Co., trustee.....	New York City.....	107,613,500	1,076.13
Morton H. Niles.....	do.....	757,200	7.57
Nicholas Stockhammer.....	do.....	739,100	7.39
James M. Walker.....	Brooklyn, N. Y.....	404,000	4.04
N. Y. Life Insurance & Trust Co., trustee.....	New York City.....	184,800	1.84
Estate Augustus C. Downing.....	do.....	110,000	1.10
Brown Bros. & Co.....	do.....	72,500	.72
E. T. Nicholas.....	do.....	62,400	.62
Estate L. Z. Leiter.....	Chicago, Ill.....	50,000	.50
Harry F. Smith.....	New York City.....	46,600	.46
Total for 10 leading stockholders.....		110,040,100	1,100.41
Total for Chicago, Burlington & Quincy.....		110,839,100	1,108.39
Per cent of amount of stock held by 10 leading stockholders to total amount of stock outstanding, 99.28.			
SOUTHERN PACIFIC, 1915.			
Pennsylvania Railroad Co.....	Philadelphia, Pa.....	34,292,400	342.92
Gebroeders Bissers en Gebroeders Tixeira de Mattos.....	Amsterdam, Holland.....	6,152,300	61.52
J. W. Darus & Co.....	New York City.....	2,968,900	29.69
S. Japhet & Co.....	London, England.....	1,847,600	18.47
Charles W. Harkness.....	New York City.....	1,830,000	18.30
Henry Clews & Co.....	do.....	1,554,600	15.54
Post & Flagg.....	do.....	1,230,900	12.30
C. I. Hudson & Co.....	do.....	1,227,500	12.27
C. J. Hambro & Son.....	London, England.....	1,226,700	12.26
R. Raphael & Sons.....	do.....	1,216,000	12.16
Total for 10 leading stockholders.....		53,573,800	535.73
Total for Southern Pacific.....		272,674,400	2,726.74
Per cent of amount of stock held by 10 leading stockholders to total stock outstanding, 19.65.			
GREAT NORTHERN, 1915.			
Curtiss Securities Co.....	New York City.....	5,198,000	51.98
Lord Strathcona, deceased.....	London, England.....	4,548,400	45.48
J. Kennedy Tod & Co.....	New York City.....	4,540,000	45.40
George F. Baker.....	do.....	3,705,000	37.05
H. F. Smith.....	do.....	2,720,000	27.20
Kidder, Peabody & Co.....	do.....	2,295,400	22.95
Hobden, Bog & Molineaux.....	do.....	2,284,600	22.84
James J. Hill.....	do.....	2,000,000	20.00
Northern Finance Corporation.....	do.....	1,980,000	19.80
Strong, Sturgis & Co.....	do.....	1,860,000	18.60
Totals for 10 leading stockholders.....		31,222,000	312.22
Totals for Great Northern.....		249,120,962	2,491.21
Per cent of amount of stock held by 10 leading stockholders to total stock outstanding, 12.53.			

¹ Surviving trustees under the will of Lord Mount Stephen.² Cunliffe, Walter Frederick, Frank Chaplin, Charles Baron Huidlip.³ 39,581 shares deposited with Central Trust Co. under decree of United States district court in the Pacific merger suit under which decree the stock is deprived of voting rights until released.

Ten leading stockholders—Continued.

Stockholder.	Address.	Par value of stock held.	Number votes to which entitled.
CHICAGO & NORTH WESTERN, 1915.			
J. C. Frick.....	Pittsburgh, Pa.....	\$6,025,000	\$60,250
Frank Work.....	New York City.....	3,327,300	33,273
Region Short Line.....	do.....	3,040,000	30,400
W. Vanderbilt.....	do.....	2,250,000	22,500
J. K. Vanderbilt.....	do.....	2,125,000	21,250
Merchants Loan & Trust ¹	Chicago, Ill.....	2,110,000	21,100
Alice G. Vanderbilt ²	New York City.....	1,721,300	17,213
United States Trust Co. of New York.....	do.....	1,372,800	13,728
Joseph N. Field.....	Chicago, Ill.....	1,220,000	12,200
A. V. Twombly.....	New York City.....	1,200,000	12,000
Total for 10 leading stockholders.....		24,391,400	243,914
Total for Chicago & North Western.....		152,509,500	1,525,095
Per cent of amount of stock held by 10 leading stockholders to total stock outstanding, 1915.....			
ATCHISON, TOPEKA & SANTA FE, 1915.			
Maatschappij Tot ³	Amsterdam, Holland.....	7,817,500	78,175
Henry C. Frick.....	Pittsburgh, Pa.....	6,934,000	69,340
Bankers Trust Co. ⁴	New York City.....	4,043,300	40,433
Union Trust of Pittsburgh.....	Pittsburgh, Pa.....	3,380,000	33,800
Waring Bros. & Co. (Ltd.).....	London, England.....	2,949,400	29,494
Rockefeller Foundation.....	New York City.....	2,110,000	21,100
Stratton Cutler.....	do.....	2,030,000	20,300
Algarten & Co.....	do.....	1,648,900	16,489
John, Loeb & Co.....	do.....	1,596,000	15,960
Warden Mills.....	do.....	1,569,000	15,690
Total for 10 leading stockholders.....		34,078,100	340,781
Total for Atchison, Topeka & Santa Fe.....		314,663,230	3,146,632
Per cent of amount of stock held by 10 leading stockholders to total stock outstanding, 1915.....			
CHICAGO, ROCK ISLAND & PACIFIC RY. CO., 1915.			
Errenliging-Terbel Artiging, etc., for 4 per cent collateral trust gold bonds of C., R. I. & P. R. R. of 2002.....	New York City.....	8,450,000	84,500
George C. Warren, Jr.....	do.....	1,086,000	10,860
Francis L. Leland.....	do.....	846,600	8,466
Richard C. Smith.....	do.....	804,600	8,046
Elizabeth Mills Reed.....	do.....	658,100	6,581
John G. Shedd.....	Chicago, Ill.....	559,400	5,594
L. Searles.....	New York City.....	517,700	5,177
L. Walloch.....	do.....	464,800	4,648
George W. Risley.....	Chicago, Ill.....	422,100	4,221
Emily A. Watson.....	New York City.....	357,000	3,570
Total for 10 leading stockholders.....		14,166,300	141,663
Total for Chicago, Rock Island & Pacific Ry.....		74,350,722	748,762
Per cent of amount of stock held by 10 leading stockholders to total stock outstanding, 1915.....			

¹ Trustee for Marshall Field, deceased.² Trustee for Cornelius Vanderbilt.³ Maatschappij Tot Beheer van het Administratiekantoor Opgericht door Hubrecht Van Haren-Carspel d'Vas Visser.⁴ Bankers Trust Co. as trustee under an agreement dated Apr. 15, 1911, by and between the Bankers Trust Co., J. P. Morgan & Co., the Atchison, Topeka & Santa Fe, and the holders of bearer certificates issued and to be issued under said agreement.

Senator KELLOGG. This intercorporate ownership that you speak of has been very largely, where it has not been broken up by the Federal Government, under the antitrust act, in so-called connecting lines, has it not?

Mr. WARNE. There are exceptions to that.

Senator KELLOGG. Oh, yes. There are exceptions where the Government now has suits pending and where it has had suits pending in the past.

Mr. WARNE. There are cases where there is absolutely no physical connection whatever between the holding company and the subsidiary company.

Senator KELLOGG. There are very few of those. The Union Pacific did buy some stock in the Baltimore & Ohio. I doubt if it connects.

Mr. WARNE. The Pennsylvania has some of the Southern Pacific, too.

Senator KELLOGG. I think the Union Pacific has sold its Baltimore & Ohio stock. A good many of those ownerships of stock which were acquired subsequent to 1898, especially in the disconnected companies, have been sold. But a great many of them, the larger proportion of them, are connecting railways, like the New York Central and the Lake Shore and the Michigan Central; like the Southern Pacific and its Texas lines, which ownership is on account of the fact that the laws of Texas permit an outside corporation to own stock in the company, but does not permit it to own the physical property; like some in Illinois, which for many years did not allow any foreign corporation to own a railroad in Illinois and did allow the Illinois corporation to own the stock of connecting lines out of the State. The laws of nearly every State permit a railroad company to own the stocks in a connecting line, and a great many of those connecting lines have been acquired by what we call the parent company instead of acquiring the physical property. Is not that true?

Mr. WARNE. That is true.

Senator KELLOGG. And in some of them bonds have been issued to pay for the stock and in some of them bonds and stock have been issued, and in some of them stock has been issued. Undoubtedly a greater proportion of bonds have been issued than stock, as you stated. If the parent company acquires the physical property through stock ownership, and the deal is fair, there is no reason why it should not issue bonds just the same as though it had bought the physical property and issued bonds on the physical property, is there?

Mr. WARNE. No, sir.

Senator KELLOGG. If a property is fairly bonded and stocked, there is no doubt that the stock is entitled to earn a dividend just as much as the bonds are entitled to earn interest.

Mr. WARNE. I do not object to that statement at all.

Senator KELLOGG. It only makes the company more able to withstand the storms and a loss of revenue if it has not got bonds.

Mr. WARNE. Exactly, sir.

Senator KELLOGG. But when it comes to the real right of the company, it has just as much right to earn a dividend on stock as it has to earn interest on bonds?

Mr. WARNE. Assuming the basis, of course.

Senator KELLOGG. Of course, you do not claim that all corporations are overcapitalized, as the ones you read? There is no doubt there was a great deal of that going on in the early days: more than now. But that is not confined to railroads, is it?

Mr. WARNE. Oh, my, no. The railroads are to a greater extent than any other industry under the regulation of government.

Senator KELLOGG. Street railways are under the regulation of the State.

Mr. WARNE. And the municipalities; that is true; yes, sir.

Senator KELLOGG. I do not deny that it is in the public interest to regulate the issuance of securities, and I have advocated it a good many years, and I do yet, so as to prevent such things; but in the beginning of the growth of the country, where railroads were built in absolutely new territory ahead of population, of course all industries were willing to issue any security to get their industry built. Is that not true?

Mr. WARNE. That is true.

Senator KELLOGG. And the conditions were different.

Mr. WARNE. We are contending to-day against the very effects of those situations and are attempting to prevent the ruthless operation of those practices on the railway employees, because we feel that this situation among the railroads is such that it acts as a sponge does upon water—that is, the constantly increasing amount of railway stocks receiving dividends is absorbing the annual wealth production and is preventing it from being distributed, as we think it should be distributed, among the great mass of the people in fair wages and in fair prices and in fair dividends to the investor of capital.

Senator KELLOGG. The bonds of railroads are very generally held by all kinds of investors, are they not?

Mr. WARNE. Yes, sir.

Senator KELLOGG. There is scarcely a bank in the country that does not have railroad bonds, either as owner or as pledgee.

Mr. WARNE. True.

Senator KELLOGG. You say they own them as investments and the market value does not affect their real investment. That is true as to an individual if he is able to hold them, of course. But as to a bank, which is required to carry these securities on their books at their actual value, is it not a fact that during the last two years banks have been obliged to write off millions of dollars in decrease in the value of bonds?

Mr. WARNE. Those fluctuations are constantly going on. Two or three years from now they may write them up.

Senator CUMMINS. Do you mean bonds upon which the interest has been regularly paid?

Senator KELLOGG. Yes; they are required to mark them down to the market value.

Senator CUMMINS. Mr. Kruttschnitt claimed that the market was no test at all of actual value.

Senator KELLOGG. That is no test for a man who is able to hold them.

Senator KELLOGG. I do not understand writing off a loss on bonds which have good security behind them and upon which the interest has been regularly paid, if the market value is no test of the value of the security.

Senator KELLOGG. Mr. Williams, the Comptroller of the Currency, has been obliged within the past few months to say to the banks that he would not enforce the rule that required them to be written down to their actual market value.

Senator CUMMINS. How does he ascertain their actual value?

Mr. WARNE. The market value, Senator.

Senator CUMMINS. I originally started out with the theory that what a thing would sell for in the market was some indication of its real value.

Senator KELLOGG. There is no doubt about it.

Senator CUMMINS. But the railroad people have so strenuously and energetically attacked that idea here that I am about ready to discard it.

Senator KELLOGG. I would not be in too much of a hurry to discard it. That is all I wish to ask.

Senator CUMMINS. You have examined the statistics very thoroughly relating to the subject, and my difficulty just now suggests what I think is the greatest vice in the form of consolidation which has gone on in the last 25 years, namely, the utter impossibility of knowing what the railroad companies did or what they do with their money. We have had put before us what is called the operating income of the railroads, the aggregate. We have had it readjusted so as to reach what is called the net railway operating income. Can you tell the committee what the net income of the railroad companies is, derived from other sources than operation?

Mr. WARNE. You can ascertain, Senator, what the railroad companies themselves say to the Interstate Commerce Commission, that they have received and spent, but unless you make an actual investigation of that particular company you have got to assume that that is a true statement.

Senator CUMMINS. I do assume it. I do not intend to question the account, but these railroad companies have a very large income aside from their income from operations?

Mr. WARNE. Very large; yes, sir.

Senator CUMMINS. In the way in which the books are kept and the reports are required to be made by the Interstate Commerce Commission, and they will have in addition to the standard return, guaranteed in this bill, all the income which they have from sources outside of operation untouched for such use as they may see fit to put it to. Now, do you know what that amount is?

Mr. WARNE. No; but it could be ascertained from the companies' reports in cases where it is not strictly holding companies. Strictly holding companies claim they are not compelled under the interstate-commerce law to make such returns, and the leading companies have refused to make any reports.

The CHAIRMAN. That is, in their capacity as a holding company?

Mr. WARNE. In their capacity as a holding company, not a railroad company.

Senator CUMMINS. Of course all the income that a railroad company has lies behind its capitalization—that is, its stocks and its bonds?

Mr. WARNE. Yes.

Senator CUMMINS. And I should like to know how much income these companies have, or will have, in addition to the amount which we propose to guarantee?

Mr. WARNE. I think you can secure that information by a request upon the Interstate Commerce Commission.

Senator CUMMINS. I have been fairly familiar with these reports for a good many years, but I have not been able to satisfy myself upon that point, except to this extent, that they will have a very large income in addition to the amount that we propose to guarantee them.

Mr. WARNE. That is illustrated in the case of the New York Central; as an operating road it pays out a certain amount of dividends; as a holding company it receives a larger amount of dividends than it pays out.

Senator CUMMINS. I did not know but what, with your inquiry and your examination of the accounts, you could tell us how much these roads would have all together, first the income that we propose to guarantee, and then the income which they will have from other sources.

Mr. WARNE. I could have prepared that information, Senator, if I had known you wanted it, but I have not got it.

Senator CUMMINS. I think it would be very material to get it before we are through with this hearing.

Now, one other subject. Do you know to what extent the holding by the railroad companies of the stocks or bonds of other railroad companies is represented in either stock or bonds of the holding companies?

Mr. WARNE. No; that is very difficult to ascertain unless you analyze the individual companies' accounts. You probably can get at it indirectly in this way, that there is about \$4,000,000,000 of American railway securities owned by the railroads. That could be analyzed from the report of any particular railroad company to the Interstate Commerce Commission.

The CHAIRMAN. That is what is known in the parlance of a profession, if there is a profession of accountants, as a duplication?

Mr. WARNE. A duplication; yes.

Senator CUMMINS. In capitalization?

Mr. WARNE. In capitalization.

Senator CUMMINS. That is what brings the capitalization down from about \$21,000,000,000 to \$17,000,000,000?

Mr. WARNE. Yes, sir.

Senator CUMMINS. Is it accurately expressed, I mean this \$17,000,000,000, which is the result of that deduction; is it security expressed by calling it the capitalization in the hands of the public?

Mr. WARNE. That is a classification that the Interstate Commerce Commission has made, and is an arbitrary classification. But many railroad companies, in reporting to the commission, include securities in the hands of the public, securities that are in the hands of other railroad companies.

Senator KELLOGG. Will you add right there that is why they report separately to the commission, is it? He says many railroad companies include in their statements stock owned by the public, and stock owned by themselves. That is, where there is a separate report to the commission, a separate operation?

Senator CUMMINS. I think it means this: The \$4,000,000,000, speaking in round numbers, that the Interstate Commerce Commission deducts from the total bonds and stock, reaching a result of about \$17,000,000,000, does not exclude the bonds and stocks held by

railroad companies which have not been represented by the issuance of bonds and stocks by the holding companies. I think that it considers, if I understand it rightly, that part of the capitalization as in the hands of the public.

Mr. WARNE. A good many roads do in their reports to the commission. They do not make that clear distinction.

Senator CUMMINS. You were inquired of with regard to these securities in the hands of insurance companies and trust companies and banks. Mainly the securities that are held by these institutions are the bonds of the railroad companies, are they not?

Mr. WARNE. Very largely—some stock.

Senator CUMMINS. You do not know the amount of them, but if the Government guarantees during the period of its possession the interest which the railroad companies have agreed to pay upon these bonds, it will have strengthened and fortified them as much as it possibly can do, will it not?

Mr. WARNE. I think that is true, except in those cases where the operating income, the average of the last three years, does not give a fair return.

Senator CUMMINS. Of course, I am referring to the bonds of the good railroad companies that have an operating income above the interest upon the bonds?

Mr. WARNE. Yes, sir.

Senator GORE. The bonded indebtedness?

Senator CUMMINS. The bonded indebtedness. With regard to the stock, you have no information as to the amount held by banks and insurance companies and trust companies, have you?

Mr. WARNE. No, sir.

Senator CUMMINS. It must be a comparatively small amount?

Mr. WARNE. I should say comparatively; yes, sir.

Senator CUMMINS. I think it is true that the laws of most States prohibit insurance companies from investing in the stocks?

Mr. WARNE. Yes, sir; but not in the bonds.

Senator CUMMINS. And the stocks which are held by banks and trust companies, I think, are mainly held as pledges on securities for the obligation of a third person?

Mr. WARNE. That is true to a considerable extent; yes, sir.

Senator CUMMINS. You have given us a very clear idea of the faults and inaccuracies of the so-called investment accounts. No one could claim, I assume, that taking the railroads as a whole, the investment is greater than the bonded and unbonded debt and the par of the capital stock?

Mr. WARNE. We claim that it is a great deal less.

Senator CUMMINS. A great deal less?

Mr. WARNE. A great deal less; and from the experience so far of the Interstate Commerce Commission it runs from 20 to 50 per cent of the present capitalization. In other words, it should be cut down in cases from one-quarter to one-half.

Senator CUMMINS. What do you think, therefore, of the plan that is set forth in this bill of guaranteeing to the railroads which move 75 or 80 per cent of the traffic of this country an income, while the Government is in possession, that will not only pay all the interest upon their debts and 6 per cent upon the par of all their capital stock, but \$150,000,000 more?

Mr. WARNE. I look at that request in this way, Senator: Affairs are in a condition of climax. We are engaged in a world war of tremendous importance. Since the prosecution of that war, the railroads are tremendously important, and I personally would rather run the risk of giving the railroads a great deal more than honestly they should have than to possibly take any action that would give them less than they absolutely need for their efficient conduct during the war; but I should make it explicitly understood that that does not in any way make rights after the war.

Senator CUMMINS. Their properties are to be maintained without any expense to them?

Mr. WARNE. Yes, sir.

Senator CUMMINS. They are to be returned, if ever, in as good condition as taken; they are guaranteed against all depreciation; they are relieved of all the hazards and risks which attend a period of the kind through which we are passing; and it seems to me that if they can get a large dividend upon all their capital stock, after paying the interest upon all their debts, they ought to be satisfied.

Mr. WARNE. I should agree with that unquestionably if the conditions were normal; but in the big, broad aspect of the economics of the railroads, you can not measure in money value, the real value, these transportation systems are to the country. Any price, almost, that the people would pay for our transportation systems, in the big, broad view of it, is worth it. But there is a basis where an honest, just, and fair return for the work performed and the money involved should be made the basis. But you can not make that the basis now.

Senator CUMMINS. You start out with the proposition that the capitalization represents a good deal more than the value of the interest which the railway companies have in the property.

Mr. WARNE. That is very true, indeed.

Senator CUMMINS. So much more that when we pay a higher rate of interest upon all the capital stock that we may assume that we are paying a still higher rate of interest upon the real value?

Mr. WARNE. I think that is true, unquestionably.

Senator CUMMINS. I think that, in view of all these circumstances, the strain which the war puts upon all of us, the necessity that everybody should make some sacrifice in order to carry on the war, that the railroads ought to be satisfied with this sure and large return which I have indicated.

Mr. WARNE. I think that is a reasonable point of view, and I believe that the railroad employees are not opposed to the proposition as presented in the administration's program.

Senator CUMMINS. Your contention is that the amount that is now contemplated under this bill to be given to the railroads, though it may be excessive as viewed in the light of the real investments that the railroads have, yet it would be wiser to pay that in the emergency that is now before us than to jeopardize the efficiency of the roads in the emergency?

Mr. WARNE. That is my personal view, Senator; unquestionably.

Senator GORE. Would that not be true also of steel properties, and wheat, and so on?

Senator CUMMINS. The Government puts up all the money to make them just as efficient as they can be made, and how will the money

we pay—the excessive compensation that we pay—add to their efficiency?

Mr. WARNE. I look at it, Senator, somewhat in this way: We had to build quite a number of cantonments hurriedly under the emergencies of the circumstances, and I do not believe there is any question but those cantonments cost a great deal more than they would under ordinary circumstances of business. I think that is a good plan, personally, because I do not think we can measure anything to-day from our ordinary, normal point of view. We have got to measure it from an exaggerated and abnormal point of view, and I, personally, would rather give the railroads too much money than too little under present conditions.

Senator GORE. We have adopted the plan of making the farmer take less for his wheat than it is worth—\$2.20. On the one hand, we are paying the farmers less for their stuff than it is worth, which is bad policy, while, on the other hand, we are paying the railroads more for their stuff than it is worth, which is also a bad policy. I am not sure that you are not right—

Mr. WARNE. Do you want to be consistent, sir?

Senator GORE. I would not make any contention of that sort, but I think the policy with the farmer is a wrong, uneconomic policy, and I think there will be less wheat grown this year than there would be otherwise.

Mr. WARNE. I think that is true.

Senator GORE. I think we ought to approximate it fairly in both instances.

Mr. WARNE. I think that is true also of the Government's attitude toward the coal situation.

Senator GORE. But it certainly can not justify paying one set of people less than their stuff is worth and paying another set of people more than their stuff is worth. That is doubly indefensible.

Mr. WARNE. That is true.

Mr. GORE. I suppose the three most practical plans of railway consolidation are: First, for two or more roads actually to consolidate and become one road in fact and in law; another is for one company to own stock in another sufficient to control it; and another is to organize a holding company to hold the stocks of two or more different concerns. Those are the three most practical plans, are they not?

Mr. WARNE. Yes, sir.

Senator GORE. Are the economic effects of those three plans the same, and if not, I should like you to discuss their comparative merits and demerits.

Mr. WARNE. It depends a good deal upon the basis of your organization. If you take your money and make an actual investment, owning the physical property and reporting your investment for what it actually was, you have got a situation that no one can complain of.

Senator GORE. No matter what the details of the plan are?

Mr. WARNE. No matter what the details of the plan are. Under our present system we are paying returns on five or ten or twenty dollars where only one dollar is doing the work, and any system that would do that would be a wrong system, whether it is a system

of direct ownership of physical property, or whether it is a system of the ownership of securities of another company, or a holding company.

Senator GORE. That is undoubtedly true, but the point is this, do you object to consolidation per se?

Mr. WARNE. In itself; no, sir.

Senator GORE. Do you not think it is a policy which rather ought to be encouraged?

Mr. WARNE. Oh, yes; I do. Organization, cooperation, consolidation, I thoroughly believe in.

Senator GORE. If we could bring about a transcontinental system, do you not think it would be a good idea?

Mr. WARNE. I do; yes, sir.

Senator GORE. Do you think it is practicable outside of Government ownership?

Mr. WARNE. It may be, for the time being as an experiment under Government regulation and private ownership.

Senator GORE. Have you ever tried to work out a unified system, a transcontinental system that would be really one system, and yet not be under Government ownership?

Mr. WARNE. No, sir; I have not gone that far, Senator, with the railway situation. It strikes me as feasible that we could make our railway systems fit in with the political extent of our territory. I do not see why it should not.

Senator GORE. I should like to know what your theory is in regard to the railway business being a competitive business under regulation by the Interstate Commerce Commission?

Mr. WARNE. I think it would be a very great injury.

Senator GORE. Do you not think it is founded on a false motion?

Mr. WARNE. I do; I think it is economically wrong to attempt to force competition.

Senator GORE. As a matter of fact it never can be worked out, can it, do you think?

Mr. WARNE. Only under a system, and all of your systems have this defect, only under a system where the controlling powers are working primarily for the public interest and not for private profit; any system where private profit supersedes the public interest will have grievous mistakes and errors. I will venture this assertion, that if the railroads of the United States were left unrestrictedly in the hands of the operating officials without any interference of any kind from large security holders, that you would get very much better transportation systems.

Senator GORE. We have finances and transportation mixed up?

Mr. WARNE. Unfortunately you have. The railway is an industry pursuing an economic result that is being interfered with in its operation by a wholly and entirely different purpose in the minds of those who control the finances of that concern.

Senator GORE. I have a sort of notion that we ought to deal with the whole system as if it were a monopoly, naturally and essentially so, adapt that policy to that fact.

Mr. WARNE. We do deal with it as an actual fact in that same way to-day. Your so-called antitrust law has had no effect in preventing railway consolidation, except in particular instances where the

courts have declared the ownership of competing lines is wrong and has disrupted them.

Senator GORE. Do you not think when we fix rates and say that shall not charge a higher rate, and at the same time say they shall compete—

Mr. WARNE. It is not economics.

Senator GORE. It is a contradiction of terms, of facts, is it not?

Mr. WARNE. It is an attempt to inject into an economic problem a political principle.

Before closing I should like, in a general way, to give the committee some idea of these ownerships of railway stock. I refer to a matter that was issued by the railroads in one of our very recent wage controversies in which they attempted to show the average amount of stock per stockholder, par value. In this compilation the railroads took the total capital stock outstanding and the number of stockholders, divided one by the other, and as a result gave us for the average amount of capital stock per stockholder \$13,958. Of course, even as a mathematical proposition, there is nothing to that, and to ascertain the average stock you can not get it by dividing the total number of stockholders into the total amount of stock. Ten stockholders may own 95 per cent of the stock. That is illustrated here in the case of the New York Central.

The total number of stockholders of record in the New York Central is 25,446. But the amount of stock held by the vast majority of these is small and relatively insignificant in comparison with the holdings of the leading stockholders, say the first 10. Let us see who are these 10 leading stockholders in the New York Central, as well as the amount of stock each holds. This information is from the report of the company to the Interstate Commerce Commission:

NEW YORK CENTRAL'S 10 LEADING STOCKHOLDERS.

Oregon Short Line Railroad Co.....	\$20,000,000
New York State Railway & Terminal Co.....	18,436,000
W. K. Vanderbilt.....	13,599,400
John Axten.....	5,525,000
Charles W. Harkness.....	3,600,000
Northern Finance Corporation.....	2,400,000
Fahnestock & Co.....	1,740,000
Alice G. Vanderbilt et al., trustee.....	1,686,300
Frederick W. Vanderbilt.....	1,501,000
Florence A. V. Twombly.....	1,500,000
Total stock of 10 stockholders.....	69,967,700

Of the entire amount of stock of the New York Central, these 10 leading stockholders alone own as much as \$69,967,700, or as large a proportion as 28 per cent. Three corporations—the Oregon Short Line, the New York State Railway & Terminal Co., and the Northern Finance Corporation—own more than 16 per cent of the New York Central's total stock—nearly \$41,000,000. Curiously, the entire capital stock of the New York State Railway & Terminal Co., which amounts to only \$100,000, is owned by the New York Central. Members of the Vanderbilt family alone own more than 7 per cent—a total of more than \$18,000,000—of New York Central's stock.

The holdings of the 10 leading stockholders have increased \$21,500,000, or nearly 45 per cent, since the mere "legal" merging of the

two systems. These 10 stockholders alone absorbed \$21,512,000 of the \$24,014,000 increase in stock, or as much as 90 per cent of the entire stock increase.

In consequence of their ownership of stock, these 10 stockholders combined have a voting power, in the election of directors and in the determination of other matters of policy, to the extent of nearly seven hundred thousand votes. This is more than 28 per cent of the total voting power of all the stock. One stockholder, and this, too, another railway corporation—the Oregon Short Line—has 200,000 votes. Another corporation stockholder—the New York State Realty & Terminal Co., which the New York Central itself owns and entirely controls, has 184,360 votes. Still a third corporation—the Northern Finance Corporation—has 24,000 votes. The remaining 7 of the 10 leading stockholders together have 291,317 votes.

Concentrated toward the same end, these holdings of the 10 leading stockholders are sufficient against the remaining scattered holdings among diversified interests, many of which seldom exercise their voting rights, to dominate the election of directors and to determine the policy of the corporation. These 10 stockholders, at least 3 of whom are working in harmony, have greater voting power than tens of thousands of other stockholders. One individual holder alone of the 10—William K. Vanderbilt—has as many as 135,994 votes. Members of the Vanderbilt family have a combined voting strength as individuals of 182,667 votes. It would take these many different individuals, each owning one share of New York Central stock, to equal the voting power of this one family.

The accompanying table shows the voting strength in New York Central affairs of each of the 10 leading stockholders:

VOTING STRENGTH OF 10 STOCKHOLDERS, NEW YORK CENTRAL.

	Votes.
Oregon Short Line Railroad Co.....	200, 000
New York State Realty & Terminal Co.....	184, 360
William K. Vanderbilt.....	135, 994
John Axten.....	55, 250
Charles W. Harkness.....	36, 000
Northern Finance Corporation.....	24, 000
Fahnestock & Co.....	17, 400
Alice G. Vanderbilt et al., trustee.....	16, 663
Frederick W. Vanderbilt.....	15, 010
Florence A. V. Twombly.....	15, 000
Total voting strength of 10 stockholders.....	699, 677

There is another equally important aspect of this question of concentration of stock ownership. The other aspect is that of dividends.

Of the total amount of dividends declared by the New York Central, the 10 leading stockholders receive annually more than 29 per cent—a sum each year amounting to nearly \$3,500,000. The three corporation stockholders receive dividends amounting to \$2,041,800—more than 16 per cent of all the dividends paid annually by this company. As much as \$1,000,000 goes to the Oregon Short Line, \$921,800 to the New York State Realty & Trust Co., whose capital stock itself is only \$100,000, and \$120,000 to the Northern Finance Corporation.

Members of the Vanderbilt family receive annually in dividends alone from the New York Central amounts in excess of \$900,000. A single member of this family—William K. Vanderbilt—receives annually in dividends alone from the New York Central as much as \$679,970—a dividend payment quarterly of \$169,992.50.

The same analysis could be made of other leading companies, and if the committee is sufficiently interested in that point you can, without trouble, secure from the Interstate Commerce Commission the interest of the 10 leading stockholders of all of the leading corporations.

The CHAIRMAN. The committee will stand in recess until 2 o'clock, and at 2 o'clock we will hear such others as are to be heard. Mr. Wills, are you through now?

Mr. WILLS. Mr. Plumb has one further statement he would like to make to the committee.

The CHAIRMAN. Let me state that there is a proposed draft by the proponents of the bill before each member here, and to the proposed modification of section 9 Mr. Plumb desires to address himself.

Mr. Plumb, if you will come at 2 o'clock we will give you time then to explain your attitude toward that modification.

(Thereupon, at 12 o'clock m., a recess was taken until 2 o'clock p. m.)

AFTER RECESS.

The committee reassembled at 3.30 o'clock p. m., pursuant to the taking of recess.

The CHAIRMAN. The committee will come to order. Mr. Plumb, you requested this morning that you be given an opportunity to make some statement in reference to the proposed amendment to section 9. You may now make that statement.

STATEMENT OF MR. GLENN E. PLUMB—Resumed.

Mr. PLUMB. As to section 9, yesterday in my remarks I stated that I understood a draft of section 9 was now being prepared which would be submitted and that I did not care to express any opinion as to the merits of the compensation until that section was before us. It has now been submitted, and I want to say that as to any plan providing for changed laws regarding the compensation to be awarded employees for injuries, the matter is of supreme importance to members of our organizations, and any plan submitted would have to be taken up first with the organizations before we could express either approval or disapproval of a proposed plan, but section 9 as it is now redrafted contains a provision abrogating our rights and remedies now provided by existing law, either State or Federal, and that of course we can not agree to or sanction.

We do not yet know whether we are to be considered as Federal employees or whether we are to be considered as employees of private corporations. Section 11 of the bill retains all remedies now existing for all other citizens, be they shippers, travelers, or members of the general public. Until our status is definitely determined and pronounced, we think that we should have the same benefits that all of the rest of the public enjoy and that any rights or remedies now existing should be fully preserved to us until a new status is definitely created. If that is done and section 11, which is intended to preserve

rights and remedies for all other citizens, is made applicable to the employees as well, then there is no emergency which requires a provision at this time for the employees.

Senator ROBINSON. Is the language in section 11 adequate to do that, or would you suggest an amendment of it?

Mr. PLUMB (reading):

That carriers while under Federal control shall in so far as not inconsistent therewith, or with the provisions of this act, or any other act, applicable to such Federal control or any order of the President, be subject to all laws and liabilities as common carriers, whether arising under statutes or at common law, and suits may be brought by and against such carriers and judgment rendered as now provided by law.

Senator ROBINSON. That language is as broad as it can be.

Mr. PLUMB. That language is broad enough to include the rights of the employees, and I think no amendment would be necessary to preserve our rights under that section, but with section 9 in the bill the provisions of section 11 would not apply to employees, and with section 9 in the bill I infer that whatever remedies are provided under section 9 will have to date back to the date when the roads were taken over, so that we are left suspended between heaven and earth, not knowing what our rights are, until at some future date the President provides a scheme of compensation.

Senator CUMMINS. Mr. Plumb, that is the broader, and I think the more vital, question in section 9. We transfer to the President under section 9 our whole legislative function with regard to the liability of carriers to employees, or the substitution of a compensation scheme for the liability. Can you contemplate a thing of that sort with any complaisance?

Mr. PLUMB. We do not contemplate that situation with entire satisfaction. The providing of a scheme of compensation and providing remedies which shall take the place of those now existing is purely a question of legislative function and measures to affect that end should be carefully considered, and all interests affected should be heard and advised with, so that resulting legislation might be fair and equitable to all of the interests.

That necessarily can not be done in an emergency, and we are not asking that it be done at this time. We are perfectly willing to go along with the general public. Leave us as we are for the present. Let us assert the rights and remedies which the law now provides until due and careful consideration can be given to a measure that shall be adequate.

Senator KELLOGG. Were you through, Senator, on that point?

Senator CUMMINS. Yes.

Senator KELLOGG. The important thing, so far as employees are concerned, is what the schedule shall be. In other words, in any legislation the most important thing is the schedule of compensation and the manner and time of its payment. Would you want to vest in anybody the absolute power to impose any schedule they saw fit on 2,000,000 employees in this country?

Mr. PLUMB. Not to be exercised arbitrarily.

Senator KELLOGG. If I recollect right, when the question was up before the commission of Congress, they first took up the constitutionality and then the question which the unions were very much interested in, of course, was the schedule of compensation, and that seemed to be the most important thing.

Senator CUMMINS. That is the point on which the legislation finally failed?

Senator KELLOGG. Yes.

Mr. PLUMB. To my mind, and I know that I reflect the opinion of the officials whom we have had an opportunity to consult, we feel that the matter is of too much importance to be disposed of in the summary manner.

Senator ROBINSON. You would rather have it determined by separate legislation and with due consideration?

Mr. PLUMB. We certainly would, and we are perfectly willing to bear any sacrifice that is imposed on the general public in having our right to levy an attachment taken away. We are protected as much as the shippers and the traveling public. We ask no more. But until careful legislation can be framed and which shall adequately meet the situation, we prefer that nothing shall be done, but the status shall be maintained.

Senator KELLOGG. I do not wish to imply that I am opposed to the principle of compensation of that kind. I think ultimately it ought to come and has got to come.

Mr. PLUMB. We are not opposing the principle.

Senator KELLOGG. I do not think any man working on a railroad gets pay enough to take the risks of that employment, and I think the risks should be borne in such a way that he will not have to take them.

Mr. PLUMB. It seems to me that if the employees are willing to abide with the situation and await the results that experience and study can frame, we ought not to have a remedy forced upon us that is not adequate.

Senator KELLOGG. I understand.

Senator ROBINSON. Very well. I think we understand your views.

Senator CUMMINS. The first draft of the bill provided that the President could, if he wanted to, extend the operation of the present compensation law to these employees. We knew then what we were doing, and now we know nothing about what we are doing.

Senator ROBINSON. That section was submitted to some one to be considered, and the draft in the tentative bill here is purely tentative, and I am impressed with the suggestions you make and I think there will be no difficulty about it.

Mr. PLUMB. If I said anything yesterday that can be construed as having any other meaning than that which I have said to-day, I want you to disregard what I said yesterday.

Senator KELLOGG. I did not understand that you did say anything different yesterday.

Senator ROBINSON. I understand your attitude perfectly. You did not know the nature of the draft that was to be submitted, and to-day you say you do not consent to this.

Mr. PLUMB. No. My understanding from the oral conference I had was that they would merely provide that there would be future legislation to take care of us, but I did not understand that such legislation as this was to be proposed.

Senator ROBINSON. Of course, it is not necessary to provide what future legislation shall be, because Congress can legislate on the subject at any time it chooses.

Mr. PLUMB. The power always exists.

Senator KELLOGG. Mr. Chairman, may I put a document in the record?

The CHAIRMAN. Yes. Without objection, you may hand to the stenographer the memorandum that you want to insert in the record.

Senator KELLOGG. The other day I asked some witness if it was not a fact that industrial securities had risen in price during 1915 and 1916 more rapidly than railroads, and I do not now exactly remember the answer, but in order to clear the matter I asked the New York paper that publishes these statistics to furnish the statement, and Mr. Osmond Phillips, the editor, has sent a diagram showing 25 railroads and 25 industrial stocks forming the basis of monthly and weekly high and low prices, with the names of the railroads and the names of the industrials attached, which I ask to be put into the record.

The CHAIRMAN. Without objection, it is so ordered.

(The statement referred to is here printed in full, as follows:)

[From the *Annalist*, New York, Monday, Dec. 31, 1917.]

RAIL AND INDUSTRIAL CHANGES SINCE START OF WAR.

The chart shows the changes by months in the average price of 25 each of the leading railroad and industrial stocks listed on the New York Stock Exchange. The heavy line indicates the high and low points by months of the railroad shares, and the dotted line the monthly changes of the industrials. For December, 1917, two points are recorded, the lowest to which the stocks fell in the month and the highest reached after President Wilson announced the taking over of the railroads by the Government.

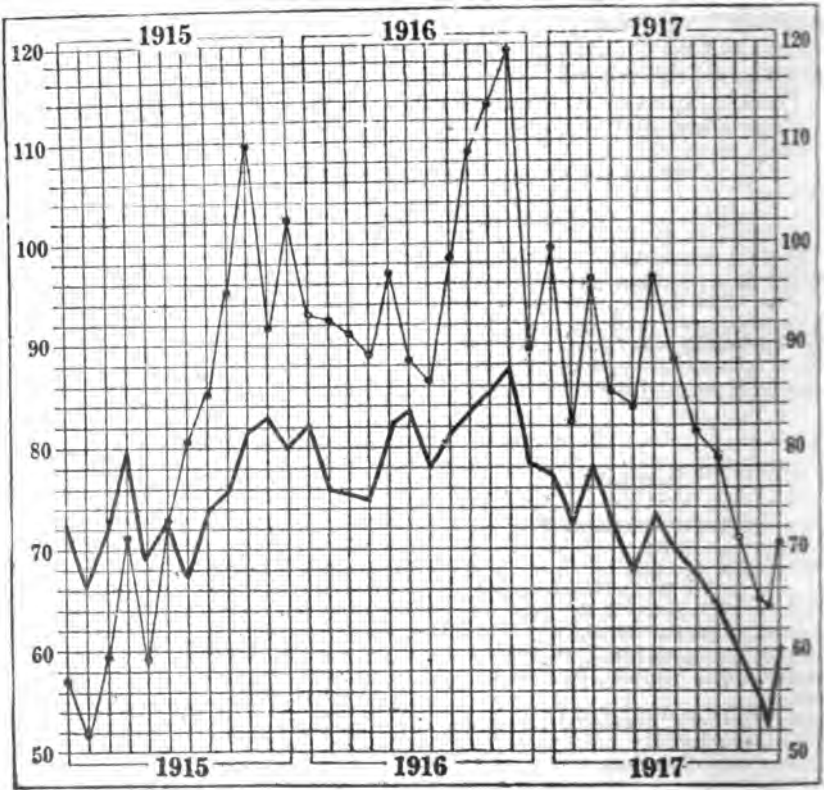
STOCK MARKET AVERAGES.

Railroads.

Archison, Topeka & Santa Fe.
Baltimore & Ohio.
Chesapeake & Ohio.
Chicago Great Western, preferred.
Chicago, Milwaukee & St. Paul.
Chicago & North Western.
Chicago, Rock Island & Pacific.
Denver & Rio Grande, preferred.
Erie.
Great Northern, preferred.
Illinois Central.
Kansas City Southern.
Lehigh Valley.
Louisville & Nashville.
New York Central.
New York, New Haven & Hartford.
New York, Ontario & Western.
Norfolk & Western.
Northern Pacific.
Pennsylvania.
Reading.
Seaboard Air Line, preferred.
Southern Pacific.
Southern Railway, preferred.
Union Pacific.

Industrials.

American Can.
American Car & Foundry.
American Locomotive.
American Smelting & Refining.
American Sugar.
Anaconda Copper.
Baldwin Locomotive.
Bethlehem Steel.
Central Leather.
Consolidated Gas.
Crucible Steel.
Distillers Securities.
General Electric.
Great Northern of Oregon.
Goodrich.
Maxwell Motors.
Pressed Steel Cars.
Republic Iron and Steel.
Studebaker Corporation.
United States Rubber.
United States Steel.
Utah Copper.
Virginia-Carolina Chemical.
Western Union.
Westinghouse Electric and Manufacturing.



The CHAIRMAN. Mr. Todd, has this statement which you present here been printed in the House hearings?

Mr. TODD. No, sir; it has not. The only thing that has ever been in print are copies of some of the official reports of the Interstate Commerce Commission.

The CHAIRMAN. Mr. Albert M. Todd, president of the Public Ownership League of America submits a statement in the nature of a brief which will be printed in the record unless there is objection. No objection is heard, and it is so ordered.

Mr. TODD. May I please ask, Mr. Chairman, whether I may be allowed to finish that? The part that I desire to finish is simply the extracts from some of the reports of the Interstate Commerce Commission because I did not have time to complete it.

The CHAIRMAN. How voluminous will this be? Will that be very voluminous?

Mr. TODD. No, sir. I will be very glad to pay any expense if there is any.

The CHAIRMAN. No. I just asked you that question to ascertain if it would be kept within reasonable bounds.

Mr. TODD. I think perhaps the entire statement, including what I would be glad to add, if possible, would occupy much less than 50 pages.

The CHAIRMAN. Very well. Without objection, you will be given leave to add the matter referred to and this statement will be printed in the record.

Mr. TODD. I thank you very much, Mr. Chairman. I will say that if at any time you desire to cross-question me on any statements I will be pleased to come, because I expect to remain in Washington for a couple of months.

The CHAIRMAN. Very well, sir.

(The statement referred to is here printed in full, as follows:)

STATEMENT OF HON. ALBERT M. TODD, PRESIDENT OF THE PUBLIC OWNERSHIP LEAGUE OF AMERICA.

Gentlemen, in appearing before you to represent, so far as I may, the interests not only of the Public Ownership League of America but the citizenship at large of our country, from whose industry the means have been provided for building and maintaining all of our transportation and other public utilities, I desire first to thank you for the privilege you have so kindly accorded.

At no time in the history of our Nation or the world has legislation been enacted of such colossal economic interest as that now before Congress, and which will so vitally affect the political institutions of our country and the happiness and welfare of its people.

In placing my views before you, I shall, on account of the limitations of time, not enter into an academic argument but confine my remarks largely to the financial aspects of the question. I will only briefly state that public ownership, as well as operation, of all those utilities and natural resources which by their nature are essentially monopolies, is one of the most natural functions of government, and is fundamental to justice, equality of opportunity, and democracy. This has been my belief for more than 30 years and has been constantly confirmed by study and observation in many foreign countries as well as in our own. In reference to this I will briefly state my experience in the genuinely democratic Republic of Switzerland.

Traveling through Switzerland, one is immediately impressed with the industry, dignity, and liberty-loving spirit of the people, evidenced by their every act and word. The locomotive engineer, the conductor, the fireman, the brakeman, and the men who construct and maintain the tracks, know they are not mercenary employees, but are part owners of the railways and all the public

works, and, as such, take a just pride and interest in their duties and labors. Under this system strikes or lockouts are unknown and impossible, for each employee realizes that in rendering his best service he is rendering a service to the State and, as a citizen of the State, to himself. It will thus be readily seen how, with every employee giving his best possible endeavor and each setting an example to those operating the other utilities (in all of which each "citizen employee" has a personal interest), the State secures much higher efficiency and service, with proportionate decrease in cost to the public. As the fictitious salaries paid in this country to presidents of the public-service companies whose chief interest is to absorb the earnings of the road are unknown and all officers and employees are coworkers under civil-service rules—"soldiers for the common good"—private graft and plunder are impossible and unknown.

Illustrating the results under this system, I purchased this ticket which I show you, good for 42 days' continuous or intermittent rides at the pleasure of the holder, over any and all of the railways and steamboats, for the equivalent of \$27, or about \$0.67 a day. Tickets are also issued for 3, 6, and 12 months at much lower rates; and yet, though these roads, in many places tunneled through the mountains or skirting precipitous cliffs, cost a million dollars per mile to construct, the results are so highly satisfactory that the Republic is constantly building extensions as rapidly as possible.

Results in efficiency and economy equally marvelous as compared with our corporate-owned systems prevail in the telegraph, telephone, express, and street railways; and one wonders how the American people can be induced in the face of the reckless speculating and plundering of our public utilities by so-called "high financiers" to permit the functions of their life to be thus controlled and abused. It seems incredible that intelligent men engaged in manufacturing and other legitimate business should not join the farmers and wage earners in the demand for public ownership. Under the present corporate system the rule of the railways is to charge "all the commodity will bear," thus limiting both the profits of the producers and the power of the consumers to buy; the transportation companies thus levying the largest tax possible without entirely killing the industry.

I will now turn to the practical questions involved in the bill under consideration.

The President of the United States, by proclamation issued pursuant to the authority vested in him by Congress, has recently taken over the railroads of the country for operation by the Federal Government during the continuance of the war, in which wise and patriotic act he has had the support and approval of the entire Nation; and as Congress is now legislating respecting the compensation to be paid the railroads and the various conditions under which these systems are to be operated, it is highly important that in the solution of this question the wisest possible action be secured.

We who believe that the public ownership and operation of all public utilities which by their nature are necessary to the welfare and happiness of the people is a natural governmental function, and we also believe that the rightful solution of the question is not based merely upon the operation of these utilities during the period of the war. We look forward to the time—which we hope is in the very near future—when, through the patriotism of our citizens and the heroism of our soldiers, victory shall come to our arms, bringing a peace that shall be wise and just to all mankind, as the fruit of the great sacrifices America and her allies are making in this world struggle. Among the fruits of such peace those of us who believe in equality of opportunity, civil liberty, and democracy, hope that public ownership and operation of public utilities and natural resources will be among our greatest achievements.

These several circumstances unite to make the present year momentous with respect to the development and solution of transportation problems. Nothing like the present situation has been seen before in the history of the world. No governmental undertaking, outside of the Great War itself, approaches in magnitude either the valuation or the operation of the approximately 250,000 miles of railroads in the United States. The welfare of the country is obviously bound up with the efficiency of its transportation system, and the prosperity of the country is so largely dependent upon the reasonableness of transportation charges, that it is needless to dwell upon these general aspects of the problem. But very few people outside of the railroad men themselves appear to realize the tremendous importance of the issues now being determined by the President, Congress, and the Interstate Commerce Commission with respect to the valuation of railroads; the fixing of the compensation to

be paid them during the period of governmental operation and private ownership; and with respect to the determination of the just and fair price to be paid by the Government when it shall proceed to Government ownership as well as operation.

The Public Ownership League of America has been organized for the purpose of furthering the policy of Government ownership and operation of public utilities, including transportation systems. It is not blind, however, to the dangers arising out of the stress and strain of these terrible times. It realizes that the mere form of Government ownership or operation will not in itself guarantee to the people of this country the benefits which they are entitled to receive from the full recognition and performance of the transportation service as a public function. The success of governmental operation of the railroads after the war is over will depend in large measure upon the financial obligations which the Government assumes in connection with their acquisition. Many of the great railroad systems of the country have been exploited and robbed by their managers over long periods of years in ways that have created national scandals unparalleled in the world's history. In this manner many of the roads have at different times been brought to bankruptcy or to a financial condition verging upon it by the studied acts of their officials who, having been intrusted with the management, have betrayed that trust for their private profit. The Public Ownership League and the thoughtful public at large believe that it would work a gross injustice to the Nation to take the railroads as they are, looted and overcapitalized, and make good to the owners all of the wicked and foolish speculations of the past, without respect to the actual value of the properties now devoted to railroad purposes. It is not our desire to be destructive in our suggestions as to governmental policies, but rather to be constructive in the best sense, with the future success of Government ownership and operation constantly in view.

Few people outside of Washington realize the enormous pressure the railroads attempt to bring to bear on the Interstate Commerce Commission and the committees of Congress. The railroads represent an investment of many billions of dollars and are naturally in a position to employ and do employ great numbers of the most skillful attorneys to take possession of the capital and try to enforce their views and their will upon the governmental authorities having to do with the determination of the great problems at issue. The league conceives that the future welfare of the people of the United States will be very greatly affected by the decisions now about to be made with respect to two chief problems, as follows:

1. *The extent of the compensation to be paid by the Government for the use of the railroads during the period of private ownership and Government operation.*—The primary importance of this problem is not in the amount of compensation or rental that may be paid during the continuance of the war or for the brief period of years during which the scheme of private ownership and governmental operation continues, but in the effect that the payment of such compensation and the agreements made with respect to it have upon the ultimate purchase price of the roads when their ownership passes from private hands to the Government. The establishment of a fixed compensation or rental to continue so long as governmental operation of privately owned roads continues will naturally have the effect of determining the earning power of the property from the present time on to the time when the purchase price therefor is to be fixed; and if the compensation or rental is excessive, the result may be the addition of several billion dollars to the permanent burdens of the transportation system of the country. With the railroads, as with public utilities, it is of the utmost importance to the consuming public that the recognized capital value shall be kept as low as practicable and shall not be swelled by the capitalization against the public of gratuities and special privileges conferred upon the transportation companies in times of great public need and danger.

2. *The principles of valuation to be applied in determining the value of the physical assets of the railroads.*—Valuation is a technical and difficult process, largely hypothetical, with which the average citizen is not familiar. Even many well-informed persons suppose that the value placed upon a public utility property by a skillful engineer is an ultimate fact which must be accepted by all parties without question. In truth, however, the final valuation even of the physical property of a railroad or any other public utility is built upon a series of assumptions and by the application of a series of rules with respect to each one of which the particular interests and judgment of the engineers doing the

work have great influence. Concealed in a final valuation are many technical questions which are matters of grave doubt and with respect to which the interests of the public and of the public-service corporations are diametrically opposed. As applied to the railroads of the United States the difference in the principals advocated at many points in the valuation work affect the final results to the extent of hundreds of millions, or even billions, of dollars.

3. *The principles to be applied respecting the capitalization of the railroads in fixing their compensation.*—As it will require about three more years for the Interstate Commerce Commission to complete its report on the physical valuations of the railroads, and as the true amounts of money actually and legitimately invested have been so completely hidden by irregular accounting and the burning of books and records to conceal the facts, the true capitalization is at present known. On this account I shall introduce herewith evidence and the official findings of the Interstate Commerce Commission to show that the present capitalization as claimed in every case examined is without any vestige of reliability and is swelled to many times the true amount by extravagance and speculations outside of railroad purposes. In consequence to these facts I recommend that further investigations be instituted with all speed, with the view of ascertaining the true and legitimate capital investments on which only, and not on water, the Government compensation to the railroads should be based, until the physical valuations be also completed.

In the above connection I respectfully suggest that the knowingly falsifying of records and the destruction of accounts be included in the section of the bill respecting criminal acts and punished accordingly.

I also respectfully suggest that the bill provide for a continuing lien upon the railroads in favor of the Government for any overpayments which may be made; that the extravagant salaries paid in some instances be revised, and all salaries be based upon the value of the services rendered; that "income on surplus," which is income on income, be eliminated; and that if for temporary purposes it be based on the average income of preceding years the period should be extended to include the past 10 years rather than for the period proposed of three war years with their excessive profits.

Herewith I respectfully submit the evidence on which my conclusions are based regarding the finances and practices of the American railroads; and in closing I desire again to express my high respect for the patriotism of the President in this emergency.

The illegal and fraudulent practices of the American railway companies in the falsifying of their accounts to cover up the expenditures of the stockholders' money for influencing and controlling legislation, politics, and the press; the frauds practiced by directors in taking for their private use the funds of the company; the deceptive accounting regarding capitalization, investment, etc.; and the burning of the books and records to secure secrecy of their acts, as shown in the official reports of the Interstate Commerce Commission, will now be shown.

During the years from 1912 to 1915 various complaints were made by shippers and the public to Congress and the Interstate Commerce Commission respecting certain illegal practices of four important systems of railways and their resulting inefficiency of service and unjust rates. On account of these complaints, which seemed well substantiated, the Interstate Commerce Commission, partly on its own initiative and partly in compliance with resolutions of Congress, made investigations and issued their official reports of findings in the years 1913 to 1917 respecting the unlawful practices and financial transactions of the following four railway systems:

The New York, New Haven & Hartford Railroad Co. (Report No. 6569; date July 11, 1914.)

The Louisville & Nashville Railroad Co. (Report No. 4788; date Feb. 9, 1915.)

The Chicago, Rock Island & Pacific Railway Co. (Report No. 6634; date July 31, 1915.)

The Cincinnati, Hamilton & Dayton Railroad Co. and the Pere Marquette Railroad Co. (Report No. 6838; date March 13, 1917.)

These investigations were made with the most painstaking care possible, covering long periods of time, in which special agents of the commission were employed to secure information and to investigate the books and accounts; and officers of the companies were summoned before the commission, several thousand pages of testimony being taken. The findings of the commission

were published in their official reports mentioned and disclose, among others, the following facts:

The evidence secured by the commission shows that every railroad company investigated knowingly falsified their accounts, partly in order to hide expenditures of large sums for controlling politics and elections and influencing legislation and the administration of laws; falsifying the accounts respecting capital, expenses, and profits, so that the commission in many instances was unable to find for what purpose vast sums were expended; and in many cases the books and accounts were burned by the directors in order to hide, in so far as possible, various illegal transactions. Many of these acts were done by directors, who are well known as among the world's greatest financiers; yet, even though many records were willfully destroyed, the commission was able to secure sufficient evidence in many cases to disclose the facts.

In order to place the various illegal practices in systematic order and to refer to official evidence—the findings of the commission—they may be briefly classified as follows:

1. Extravagant speculations and purchases of worthless securities in the interests of the directors; peculations from the stockholders' money by illegal devices, accompanied by the falsifying of books and accounts and their later burning by the directors.

2. Illegally spending the stockholders' money and property to corruptly influence politics, the press, and public opinion, and to secure secrecy respecting their acts.

3. Acts to secure a monopoly against the public interest by the violation of the laws of many States as well as of the Nation.

4. The organization by the railway directors of fake corporations with dummy officers to hide the identity of the real promoters and shield them from prosecution.

5. The voting to themselves by the directors of extravagant salaries, in addition to which large sums were taken by some of these officials without warrant of law.

The various acts recited are necessarily interwoven and will be grouped by subjects as symmetrically as convenient.

The wasting of the companies' resources in extravagant speculation and the burning of the records.

The following extracts are from the official report, No. 6569, of the Interstate Commerce Commission, respecting the New York, New Haven & Hartford Railroad Co., July 11, 1914 (pp. 32 to 35):

"Public hearings were held extending over a period of 60 days of almost continuous session. Witnesses in a position to have knowledge of the transactions under scrutiny were examined. In the search for truth the commission had to overcome many obstacles, such as the burning of books, letters, and documents and the obstinacy of witnesses who declined to testify until criminal proceedings were begun for their refusal to answer questions. The New Haven system has more than 300 subsidiary corporations, in a web of entangling alliances with each other, many of which were seemingly planned, created, and manipulated by lawyers expressly retained for the purpose of concealment or deception. Ordinarily in investigations of this character evidence is easily adduced by placing the witnesses upon the stand, but in this investigation the witnesses other than the accountants for the commission were in the main hostile and with few exceptions their testimony was unwillingly given.

"The result of our research into the financial workings of the former management of the New Haven system has been to disclose one of the most glaring instances of maladministration revealed in all the history of American railroading. In the course of the investigation many instances were uncovered of violation of the laws of different States. As these were not understood to be pertinent to our inquiry under the Senate resolution we did not follow them into their details. As pointing to violations of State laws, we have turned over the evidence concerning local occurrences in New York City to the district attorney for the proper district, and the testimony relating to irregularities in Massachusetts and Rhode Island have been laid before the proper authorities of those States. The commission has also furnished the Department of Justice with a complete record of the testimony.

"The difficulties under which this railroad system has labored in the past are internal and wholly due to its own mismanagement. Its troubles have not arisen because of regulation by governmental authority. Its greatest losses and

most costly blunders were made in attempting to circumvent government regulation and to extend its domination beyond the limits fixed by law.

"The subject matter of this inquiry relates to the financial operation of railroad system which, on June 30, 1903, had a total capitalization of approximately \$93,000,000, of which \$79,000,000 was stock and \$14,000,000 bonds. In the 10 years from June 30, 1903, this capitalization was increased from \$93,000,000 to \$417,000,000, exclusive of stock premiums, or an increase of \$324,000,000. Of this increase approximately \$120,000,000 was devoted to its railroad property and was expended for betterments and equipment. This leaves the sum of \$204,000,000, which was expended for operations outside of its railroad system. Through the expenditure of this sum this railroad system has practically monopolized the freight and passenger business in five of the States of the Union. It has acquired a monopoly of competing steamship lines and trolley systems in the section which it serves. The financial operations necessary for the acquisitions, and the losses which they have entailed, have been skillfully concealed by the juggling of money and securities from one subsidiary corporation to another.

"SIGNIFICANT INCIDENTS.

"Marked features and significant incidents in the loose, extravagant, improvident administration of the finances of the New Haven, as shown by investigation, are the Boston & Maine despoliment; the iniquity of the Westchester acquisition; the double price paid for the Rhode Island trolleys; the recklessness in the purchase of Connecticut and Massachusetts trolleys at prices exorbitantly in excess of their market value; the unwarranted expenditure of large amounts in 'educating public opinion'; the disposition, without knowledge of the directors, of hundreds of thousands of dollars for influencing public sentiment; the habitual payment of unitemized vouchers without any specification of details; the confusing interrelation of the principal company and its subsidiaries and consequent complication of accounts; the practical financial legerdemain in issuing large blocks of New Haven stock for notes of the New England Navigation Co., and manipulating these securities back and forth; fictitious sales of New Haven stock to friendly parties with the effect of boosting the stock and unloading on the public at the higher 'market price' the unlawful diversion of corporate funds to political organizations; the catering of retainers to attorneys of five States, who rendered no itemized bills for services and who conducted no litigation to which the railroad was a party; extensive use of a paid lobby in matters as to which the directors had to have no information; the attempt to control utterances of the press by subsidizing reporters; payment of money and the profligate issue of free passes to legislators and their friends; the investment of \$400,000 in securities of a New England newspaper; the regular employment of political bosses in Rhode Island and other States, not for the purpose of having them perform service, but to prevent them, as Mr. Mellen expressed it, from 'becoming on the other side'; the retention of John L. Billard of more than \$250,000 in a transaction in which he represented the New Haven and into which he invested not a dollar; the inability of Onkleigh Thorne to account for \$1,000,000 of the funds of the New Haven intrusted to him in carrying out the Westchester proposition; the story of Mr. Mellen as to the distribution of \$1,200,000 for corrupt purposes in bringing about amendments of the Westchester and New England franchises; the domination of all the affairs of this railroad by J. P. Morgan and Mr. Mellen and the absolute subordination of other members of the board of directors to the will of these two; the unwarranted increase of New Haven liabilities from \$93,000,000 in 1903 to \$417,000,000 in 1913; the increase in floating notes from nothing in 1903 to approximately \$40,000,000 in 1913; the indefensible standard of business ethics and the absence of financial acumen displayed by eminent financiers in directing the destinies of the railroad in its attempt to establish a monopoly of the transportation of New England. A combination of all these has resulted in the present deplorable situation in which the affairs of this railroad are involved."

Pages 35 to 41 of the report give a history of the celebrated transaction which 18 miles of railroad, in which Directors J. P. Morgan, sr., William Rockefeller, and Mr. Miller were interested, was unloaded by them on the railroad company at a meeting kept secret from the rest of the board of directors, at which meeting President Mellen presided. This property proved to be more than worthless to the stockholders, having been operated at an annual

loss of over \$1,000,000 and for which their directors forced them to pay the vast sum of \$36,434,173.25.

The principal accounts respecting this transaction were kept in the office of J. P. Morgan & Co. in such a manner as to hide the purposes for which moneys were received or expended, under the title of "Special Account No. 2." Part of the accounts were kept by another banker interested in the transaction named Oakleigh Thorne, respecting which the commission report says:

"It appeared during the progress of this investigation that the personal records of Thorne which might have shown the details of these disbursements had been burned by him in January, 1912."

This transaction is all the more sensational since the president of the road was not permitted by the directors, who robbed it to the extent of millions of dollars, to know who got the money.

The following is from pages 35 to 38 of the report:

"THE NEW YORK, WESTCHESTER & BOSTON RAILWAY CO.

"The Westchester is a story of the profligate waste of corporate funds. The road was not necessary as a part of the New Haven system. It parallels other lines already owned by the New Haven and traverses territory which the New Haven already served. That it was recognized as unnecessary by the New Haven itself at its inception is evidenced by the fact that the New Haven sought an injunction to restrain the construction of this road on the specific ground that it was not in answer to any public necessity and paralleled its already existing line.

"The enormous sum of \$36,434,173.25 was expended for a road only 18.03 miles in extent, which is being operated at an annual loss of approximately \$1,250,000, and which will have to increase its earnings four and one-half fold before it can pay its operating expenses and fixed charges. It is inconceivable that this enterprise could have been entered into by the New Haven as a result of the mandates of good judgment and proper railroading.

"The Westchester acquisition was planned and executed by a special committee of the board, consisting of directors Morgan, Rockefeller, and Miller, with president Mellen as chairman. The vote appointing this committee 'on proposed competition between the Connecticut State line and Harlem River, with power,' does not disclose an intention to authorize the buying of charters and promotion securities and the building of a new railroad, much less one at a cost of \$36,000,000. It is ambiguous and was evidently intended to conceal a secret purpose. The full board was not taken into the confidence of those directors who wanted these securities purchased, and no report was ever made by this committee placing the situation as they found it before the board.

"The first information the board had concerning the extravagant acquisition of Westchester and Port Chester securities was on November 8, 1907, when this committee made its only report. It was then learned that \$11,155,000 had been expended in obtaining control of these two insolvent promotion schemes, and that this expenditure carried with it an obligation to construct two railroads, under franchises of doubtful validity, paralleling the existing line of the New Haven.

"There is no record that this committee ever required from these parties an itemized statement of the disbursements they made of the funds advanced from 'special account No. 2'; nor was any such statement ever rendered. No vouchers were taken. Special account No. 2 on the books of J. P. Morgan & Co. shows nothing more than the lump sums received from the New Haven and the disbursement of the same to Thorne and later to the Millbrook Co. on notes of the respective payees. It appeared during the progress of this investigation that the personal records of Thorne which might have shown the detail of these disbursements had been burned by him in January, 1912.

"In a letter of October 30, 1906, to C. S. Mellen from the attorney, Francis Lynde Stetson, who was representing all the parties in the deal, namely, J. P. Morgan & Co., the Millbrook Co., Perry & Thorne, and the New York, New Haven & Hartford Railroad Co., there is the following language which is significant as to the course the committee was pursuing:

"Referring to the conversation this morning between yourself, Mr. Thorne, and myself, it has occurred to me that it is possible that Mr. Thorne's purchases and even his payments may have to begin before he shall have ascertained the validity of the two principal charters which he is to acquire, and that in the

event of the development subsequently of their invalidity it might be that the money spent would be money lost.'

"The report of this committee, however, was unanimously approved, ratified and confirmed' at the meeting of the board of November 8, 1907, at which the following directors were present: Mellen, Rockefeller, Morgan, Milner, Thayer, Brooker, Brush, Warner, Cheney, Miller, Skinner, Barney, Taft, Witten, Elton, Henningway, Robertson, Robbins, and Parker.

"After this meeting of the board, at which this undetailed report was ratified, Mr. Mellen went to see Mr. Morgan, and requested more information as to the expenditure of the amounts. According to Mr. Mellen's evidence, Mr. Morgan asked him if he knew who wrote the report, and upon Mr. Mellen's reply: 'Yes; Mr. Stetson wrote it.' Mr. Morgan asked him, 'Do you think you know more than Stetson?' Mr. Mellen admitted he did not, and apparently he quiesced, but took the precaution to write upon the back of his report, which he still smarting under the humiliation of the interview with Mr. Morgan, the following words:

"The trouble with this is there is nothing to show who got the money for the truck turned over. I don't like the looks of it, and I don't see why the money should not be made plain. If I had the stock and sold it, I should expect others would state they bought it of me; but that don't seem to have been the disposition here. I never have known the first thing about who originally bought the securities, what they were sold for; and no one has thought I was entitled to know. Perhaps I am not. I would feel better if there were at least a disposition to let me know something more than appears in the record.

C. S. M.

"11-9-1907.

"The New Haven had now acquired two franchises with routes parallel to each other and its own line at a distance of only a few hundred yards apart. Some money had been spent on each route by the promoters, as required by their franchises, in acquiring real estate, surveying, and minor construction. The franchise for the route for which the larger sum had been expended, the Westchester, was under attack in the courts. Only \$281,860.64 had been spent on the Port Chester route, and a proceeding had been instituted against the franchise, because the construction work had not progressed as required. The validity of both franchises was beclouded. An application had been made to the proper authorities to permit the consolidation of the two projects and the construction of one road, but this was tied up in the courts by injunction proceedings in which an appeal had been taken from an order granting the injunction.

"With all this conflicting litigation pending, matters were necessarily in a most unsatisfactory state and at a tangled standstill. After all the large expenditures which this committee had made in acquiring the stocks of these companies there was still outstanding 34,053½ shares of the stock of the New York, Westchester & Boston Railroad Co., which proved to be the instrument of delivery. According to the testimony of Mr. Mellen, the delivery appeared in the person of the late Thomas J. Byrnes, at one time an inspector of police in New York City.

"The solution of the difficulties was the further expenditure of \$1,524,072.75. This was artfully arranged by having the New Haven on June 15, 1908, transfer to its subsidiary, the New England Navigation Co., 8,000 shares of its stock at \$150 per share, which the Navigation Co. in turn transferred to Charles S. Mellen, the president of both corporations, who conducted the negotiations. On March 5, 1909, an additional 1,495 shares of New Haven stock at \$150 per share was in like manner placed in Mr. Mellen's possession, and certain sums of money were also advanced to him from time to time.

"There were just 13 things that had to be done, according to Mr. Mellen, to get the Westchester out of its franchise difficulties, and it is significant that all amendments to the franchises were obtained, and the sequence was that the New Haven, in addition to these things, received 30,431 of the 34,053½ outstanding shares of the New York, Westchester & Boston Railroad Co. stock, which Mr. Mellen testified was not worth 10 cents a pound. The testimony is somewhat occult, but the character of the transaction is no less certain. This money was used for corrupt purposes and the improper expenditures covered up by the transfer to the New Haven of these worthless securities.

"In explaining how these negotiations were conducted Mr. Mellen testified that it was intended that one share of New Haven stock should be exchanged for

three shares of Westchester stock. When the New Haven stock was not immediately at hand he issued to the messenger who brought Westchester stock a duebill, which was in terms an order on himself to pay on demand to bearer the specified number of shares of New Haven stock or its equivalent in cash at \$150 per share, with accrued dividends. Many of these duebills were not presented until Mr. Mellen's connection with the New Haven was severed, and five of them, aggregating \$50,000 approximately, are still outstanding. During the time the duebills were outstanding Mr. Mellen collected the dividends on the New Haven stock which they represented, and at each dividend period unknown messengers would appear in his office at the Grand Central Station in New York City and demand these dividends, which Mr. Mellen would then pay with his personal checks, so drawn that the identity of the persons cashing them could not be ascertained. It seems very strange that Mr. Mellen was not able to identify with any particularity anyone with whom he had these transactions except the late Thomas J. Byrnes.

"No comment is necessary to make clear to the mind the corrupt and unlawful nature of this transaction, and it would seem that the amount illegally expended could be recovered from Mr. Mellen and the directors who authorized it.

"Almost coincident with the above transaction there was a further expenditure of \$1,135,935.41 made to settle a suit brought by one Gotshall, a contractor, against Thorne and Perry, which the New Haven paid under the contract which this special committee had made with the parties. This further amount must also be charged against the Westchester acquisition."

HOW THE OFFICIALS PROFITED AT THE EXPENSE OF THEIR ROADS BY CONTRACTS WITH COMPANIES IN WHICH THEY OR THEIR FRIENDS WERE FINANCIALLY INTERESTED.

The records of the New Haven, as well as the other railway systems investigated, invariably show that the officials did not purchase their supplies in a businesslike manner and at reasonable prices, but at extravagant prices in their own interest without regard to that of the stockholders. As this was the general custom, and the history abounds with many transactions, a single reference must suffice, from page 61 of the report:

"LARGE PURCHASES WITHOUT BIDS.

"Purchases of cars and coal are two large expenditures that railroads make. The New Haven purchased cars almost exclusively from James B. Brady without competition and to the extent of some \$37,000,000. Mr. Brady, as a witness, made no secret of his generosity to the officials with whom he had business. His methods were justified by him on the ground that the officers of the New Haven were old friends.

"Locomotives were purchased from a company in which a director of the New Haven was also a director. Many supplies obtained by the New Haven were from companies having directors who were also directors of the New Haven.

"Corporate economy is not practicable where gifts and obligations arising from friendship tend to obscure official duty."

The following extract respecting the railroads' expenditures for controlling politics is found on pages 61-62 of the report:

"POLITICAL CONTRIBUTIONS.

"The New Haven Railroad had no politics. It was Democratic in Democratic States and Republican in Republican States. As Mr. Mellen testified, its effort was always to 'get under the best umbrella.'

"Payments made for political purposes totaled a large sum.

"For instance, in 1900, \$50,000 was contributed by the New Haven for campaign purposes through J. P. Morgan & Co. No proper and complete voucher for this payment appears on the books of the New Haven Co.

"In 1904 a payment of \$50,000 was made through Mr. Mellen for political purposes. This was secretly done and not reported to the directors or stockholders or in any manner made public.

"No public-service corporation may rightfully use corporate funds to promote a political cause or to support a political candidate or a political party.

"A corporation as such has no political principles to maintain and no political candidates to support.

"The revenues of a public-service corporation are for the most part derived from the exercise of the right delegated to it by the sovereign power to tax the public by fixed rates established in accordance with law. Shippers and the traveling public may be presumed to be divided in political opinion. Corporate revenue derived by public tax from men of one political conviction can not be used to support the fortunes of a candidate or party of contrary political principles.

"Regardless of the injustice to stockholders and travelers belonging to another party which results from such use of funds, the withdrawal from corporate use and the diversion to political use is illegal and indefensible."

DUMMY COMPANIES FORMED TO HIDE THE IDENTITY OF RAILROAD OFFICIALS AS TO THEIR COMPLICITY IN ILLEGAL ACTS AND FRAUDS ON THE STOCKHOLDERS.

The following is from pages 45, 60, and 61 of the official report:

"Witnesses who were officers of some of these companies appeared before the commission and testified that they acted as 'dummies' under the directions of Robbins and of attorneys selected by him. Some of them handled, without any knowledge of the nature or purpose of the transactions, checks approximating \$3,000,000.

"DUMMY COMPANIES

"The frequency with which dummy corporations and dummy directors appear in this record leads to the conclusion that some one high in the counsels of the New Haven had an obsession upon the subject of the utility of such sham methods. The directors of the Billard Co. confessed that they were dummies and knew nothing of its operations. Why men of respectability and standing as these appear to be should lend their names as dummies passes comprehension.

"In the organization of one of the steamship companies the young lady stenographer was made president; and a youth of 21 years of age by the name of Grover Cleveland Richards was selected as treasurer of another company.

"Clerks and irresponsible persons were drawn upon to supply the demand for dummies in the financial joy riding by the management of the New Haven. Mellen's stock in the New England Investment & Securities Co. was held by James B. Brady, who testified that he was merely a dummy for Mr. Mellen. Director Skinner's stock in this same company was held by a relative and a bookkeeper in his office. Thus, throughout the entire story of deception, the New Haven management vainly endeavored to hide the true facts behind these dummy individuals and dummy corporations.

"As a matter of law, such devices are feeble and puerile, but if the master financiers behind these New Haven transactions could use these sham methods and thus give their indorsement to the availability of such crooked schemes to cover the true substance and fact of financial transactions it indicates a low state of financial morality. No condemnation can be too severe to apply to the frequent use of these companies by the New Haven.

"While in many States there are safeguards established by law, in other States there is such a prodigality in the creation of corporations as to greatly prejudice the interests of investors, creditors, and the public welfare generally.

"While stock in the New Haven road was listed on the New York Stock Exchange a large portion of its funds were invested in 'blue sky' corporations, the officers of which knew nothing of the purposes or assets of the companies of which they were managers or officers."

MILLIONS WASTED IN THE PURCHASE AT EXTRAVAGANT PRICES OF TROLLEY LINES AND STEAMSHIP COMPANIES, IN WHICH TRANSACTIONS A UNITED STATES SENATOR AND RAILROAD DIRECTORS PROFITED AT THE EXPENSE OF THEIR STOCKHOLDERS.

The following is from pages 41-44 of the report:

"RHODE ISLAND TROLLEYS.

"The purchase of the Rhode Island trolleys was another instance of millions wasted in acquiring properties that bring an annual deficit instead of a surplus and constitute a liability instead of an asset in the New Haven System.

"The evidence shows that the Rhode Island trolley transactions were deliberately entered into with a full knowledge of the large deficit that they would bring and with the determination to acquire trolley control in Providence regardless of expense.

"A committee of the board of directors of the New Haven had been appointed for the purpose of looking into the Providence trolley situation, with a view of purchasing that property, and this committee, after considering the proposition, reported adversely. Not content to abide by this action of his board, Mr. Mellen, after some six months, revived the matter. This was done after a conference between Mr. Mellen and former Senator Nelson W. Aldrich, who was largely interested in the United Traction & Electric Co., the largest lessor company.

"The United Gas Improvement Co., of Philadelphia, that controlled this property under lease, had capitalized the future hopes of the proposition into a holding company known as the Rhode Island Securities Co. and had issued \$19,899,000 of debentures, which represented an investment of approximately only \$6,000,000. The difference in these amounts was, as Mr. Mellen testified, merely capitalized water.

"Not to be deterred by extravagant expenditure, Mr. Mellen undertook to exchange the debentures of the Providence Securities Co., which he had created for the purpose, for these debentures of the Rhode Island Securities Co. and to add thereon the guaranty of the New York, New Haven & Hartford Railroad Co., both as to principal and interest. The result of the transaction was to enable the United Gas Improvement Co. to realize par value on these securities based merely upon lively expectation of future possibilities and thereby immediately placed the burden of the watered stock upon the backs of the New Haven stockholders.

"The millions that were made from this transaction did not come through magic, but were brought into existence at the expense of the stockholders of the New Haven, upon whom and the public the yoke of giving value to these securities ultimately rested, and the New Haven stock was diluted to the extent of the water thus added. The gas company also owned some Connecticut trolley lines and it was made a further condition of the Rhode Island trolley acquisition that the New Haven take over these properties.

"When the details had been worked out by Mr. Mellen for the assuming of his additional burden the board of directors without question acquiesced. Mr. Mellen testified that these Connecticut trolleys represented a payment of about \$10,000,000 more than their value.

"This transaction seems such an extravagant purchase as makes it a matter of interest just who owned the securities of the Rhode Island Securities Co. This information could be furnished from the stock books of that company, but during the progress of this investigation it was learned that these books had also been burned. A detailed report on the Rhode Island trolleys is to be found in the appendix made a part hereof, Exhibit B.

"The Rhode Island and Connecticut trolley ventures are further evidences of the prodigality in the expenditure of the money of the New Haven stockholders in carrying out an unlawful policy of transportation monopoly.

" THE STEAMSHIPS.

"The New Haven from time to time had felt the harassing effect of competition from the steamship lines that piled between the several larger cities that it served. Restless of any limitation of his power, President Mellen proceeded to acquire the steamship lines and thereby stifle this interference with the New Haven properties.

"The Hartford & New York Transportation Co. cost the New Haven \$2,538,416.78; the Eastern Steamship Corporation cost \$4,200,000; the Merchants & Miners' Transportation Co. cost \$5,774,500; the New Bedford, Marthas Vineyard & Pawtucket Steamboat Co. cost \$141,700; the New England Steamship Co. cost \$2,100,000; the Maine Steamship Co., \$17,300; or a total of \$24,772,416.78.

"The testimony shows that the physical valuation of the properties acquired as a result of these outlays approximates something like \$10,000,000. The New Haven advises that it has recently disposed of its holdings in the Merchants & Miners' Transportation Co., at a loss of \$3,594,500.

"These steamship lines were not acquired by the New Haven openly, but overtly and by devious methods. Dummy companies and dummy officers and

directors were used in financial maneuvering that resulted in the New Haven controlling these steamships.

"In connection with these steamship purchases, it was necessary to have piers. The record shows money payments in connection with pier leases which were unmistakably improper, and these payments were covered up by being charged on the books of other companies to the New Haven under such headings as 'Repairs on steamers.'

"There were payments to one John Hall McKay of many thousands of dollars for which no itemized vouchers were given. Mr. McKay left for Europe after this investigation was commenced, and his evidence could not be secured. These pier leases in the city of New York are controlled by public officials, as the municipality owns the piers, and arrangements for the leases had to be made through these officials. But because of the methods employed to conceal these expenditures by increases of capital stock and otherwise, it has been impossible to give any total amount of these payments.

"After Mr. Mellen had obtained control of every boat line of any importance in New England, he suddenly changed his attitude when the public discovered the real ownership. It was then that he proposed and urged that they be disposed of, but in this he was overridden by his board."

JUGGLING THE ACCOUNTS TO INCREASE CAPITALIZATION AND HIDE IRREGULARITIES

It has always been a favorite device of the American railroads to print additional certificates of capital stock which represent no real value and sell them to the public; and, in other cases, by the juggling back and forth of the assets and accounts to suit the private purposes of directors and financiers to form an excuse for increased rates. The Interstate Commerce Commission refers to these methods in the following extracts from pages 57-58 of the report:

"QUESTIONABLE METHODS EMPLOYED TO INCREASE THE AMOUNT OF CAPITAL STOCK

"Increases in capital stock of the New York, New Haven & Hartford Railroad Co. have been made upon the basis of transfers of assets from one subordinate company to another.

"The steamship properties of this system at one time were held by the New England Navigation Co., approximating a cost of \$11,500,000. This latter company in 1907 transferred the title to these steamship properties to the Consolidated Railway Co. at a value of \$20,000,000. The Consolidated Railway Co. thereupon increased its capital stock \$20,000,000. The Consolidated Railway Co. was then merged with the New Haven, and the stock of the latter company increased \$30,000,000, \$20,000,000 of which went to the New England Navigation Co., and placing in its treasury by this transaction \$20,000,000 Consolidated Railway stock, which by the merger became New Haven stock, with a market value of over \$30,000,000. It was this stock with which control of the Boston & Maine Railroad Co. was secured.

"After the New England Navigation Co. had divested itself of the steamship properties, to operate which it was formed, one would naturally expect that the Navigation Co., having served its purpose, would have been closed up and its charter surrendered, but having a charter which had powers sufficient to permit of general banking operations, the Navigation Co. has been utilized from time to time as a holding company for the accomplishment of irregular transactions, indefensible under any test of sound business management.

"MANIPULATION OF ACCOUNTS.

"Proper accounting demands that the records of a company should reflect accurately the transactions relating to the matter recorded, and where accounts fail to reveal a true history of the transactions it can be due to but one of two causes—carelessness or design.

"Several transactions appear of record which show that by no stretch of imagination can the irregularity of recording be classified as due to carelessness; the following are illustrations:

"In February, 1911, the New York, New Haven & Hartford Railroad purchased 23,520½ shares of the Rutland Railroad Co.'s stock from the New York Central & Hudson River Railroad Co., giving in exchange therefor its shares

upon the Farmers' Loan & Trust Co. in the sum of \$2,864,977.15. No entries can be found in the record of the New Haven Co. which reveal this transaction. The stock thus acquired was on the same day, with a check for \$135,022.85, delivered to the New England Navigation Co. in exchange for its note of \$2,500,000. The effect of the recording of this transaction is that the sum paid the New York Central for the stock shows as a cash advance to the New England Navigation Co.

LOSSES OF \$60,000,000 TO \$90,000,000 DUE TO WASTE, MISMANAGEMENT, AND PECULATIONS BY RAILROAD OFFICIALS AND ATTEMPTS TO CONTROL POLITICS, THE PRESS, AND PUBLIC OPINION.

The following is from pages 63-70 of the official report:

"There is the additional loss growing out of the unfortunate Billard transaction of \$2,748,700 unless John L. Billard is compelled, as he should be, to make restitution.

"In addition there have been large expenses incurred in litigation, in procuring legislation, and in a vain attempt to stem the tide of adverse popular opinion.

"A summarization of these figures where they are specific is as follows:

Depreciation (using market price of \$40) :

Boston & Maine.....	\$20, 475, 025. 68
Billard transaction.....	2, 748, 700. 00

Total depreciation and loss..... 23, 223, 725. 68

"It is extremely difficult to make an estimate of the loss on the New York, Westchester & Boston investment by the New Haven. It is fair to assume, in view of the character of the assets obtained by the original expenditure of \$11,155,000, by the further expenditure of Mr. Mellen of \$1,200,000 for shares 'not worth 10 cents a pound,' and from further facts recited in relation to the Westchester proposition in another portion of this report, that there was a wasteful expenditure of New Haven capital, approximately \$9,800,000, accounted for by the following items, for which no commensurate return was received by the New York, New Haven & Hartford Railroad Co.:

\$6,264,914.10, representing the amount for which there was nothing tangible received for the payment by the New Haven of \$11,155,000.

1,200,000.00, expended by Mr. Mellen in the accomplishment of the franchise amendments to the Westchester properties.

1,085,935.41, paid in settlement of the William C. Gotshall suit.

50,000.00, attorneys' fees in the same case.

1,200,000.00, representing the loss to the New Haven on the sale of New York, Westchester & Boston bonds guaranteed by the New Haven at par.

"The stock of the Westchester company now held by the New Haven is given by that road a book value of \$6,241,951.76. In reality its present worth is merely nominal.

"The notes of the Westchester property held by the New Haven are given a book value of \$5,708,000. These notes have absolutely no market value.

"The annual loss on the last two items to the New Haven, on a 4 per cent basis, would be \$477,998.07.

"The annual deficit to the New Haven from bond interest, interest on other obligations, and taxes resulting from the Westchester venture amounts to \$1,179,243.92. When the operating deficit is added, the total annual loss to the New Haven is \$1,657,241.99.

"With the prospect of a continuous deficit for years to come, there can be little doubt that the total loss to the New Haven as a result of the Westchester proposition will amount to approximately \$17,000,000.

"The stock of the Connecticut company, carried now as an asset by the New England Navigation Co., represents a cost or book value of \$40,000,000. The only available appraisal of this stock shows a loss of \$12,535,386.01. The stock of the Rhode Island company, carried by the New Haven at a book value of \$24,352,336.41, is shown by the only available appraisal to be worth \$6,000,000, a loss of \$18,352,336.41.

1128 GOVERNMENT CONTROL AND OPERATION OF RAILROADS.

"A summary of the foregoing is as follows:

Boston & Maine.....	\$23, 223, 725. 68
New York, Westchester & Boston.....	11, 457, 156. 09
Hartford & Worcester Street Railway.....	73, 394. 27
Springfield Railway Companies.....	203, 221. 15
Worcester Consolidated Street Railway.....	10, 500. 00
Worcester & Southbridge Street Railway.....	15, 580. 00
Connecticut company.....	12, 535, 386. 01
Rhode Island company.....	18, 352, 336. 41
Total.....	65, 871, 299. 61

"There was a loss in the recent sale of the New Haven interests in the Merchants & Miners Steamship Co. of \$3,594,500.

"These annual losses will, to a large extent, recur from year to year for an indefinite period, and therefore represent large future losses.

"From all of the foregoing and from a careful consideration of the method in which expenditures, not specified herein, have been made, it is submitted that a reasonable estimate of the loss to the New York, New Haven & Hartford Railroad Co. by reason of waste and mismanagement will amount to between \$60,000,000 and \$90,000,000.

"The splendid property of the New Haven Railroad itself will be called upon for many a year to make up the drain upon its resources resulting from the unpardonable folly of the transactions outside the proper field in which stockholders supposed their moneys were invested.

"But honesty and efficiency of management of this property as a railroad only will undoubtedly in time restore its former standing.

"EVIL OF INTERLOCKING DIRECTORATES."

"A system of interlocking directorates has grown up and flourished in the past few years which has brought about combinations and intercorporate relationships not conducive to the public welfare. On the New Haven board of directors there was a representative of the Pennsylvania Railroad, which railroad owned 35,000 shares of New Haven stock; there was a representative of the New York Central, which owned 35,000 shares; there was a representative of Insurance Interests that owned 35,000 shares and a representative of an express company that had a contract with the railroad; there were directors who were also directors of the Standard Oil Co., the United Steel Corporation, the Pullman Co.; in fact, every other interest seemed better represented on the New Haven board than the average stockholder's interest.

"The practice of one man serving on many boards of directors can not be too strongly condemned. The man who holds directors' positions in a dozen corporations may be thoroughly honest in his relations with each, but it is not practicable for him to give the stockholders of each corporation the full benefit of his ability and energy when, in truth, he can afford only a small fraction of his attention to each corporation. If he is not permitted to know of the real workings of the corporation and, when he serves on so many boards that is in the nature of things impossible, the corporation gets an indorsement to which it is not entitled.

"There are too many ornamental directors and too many who have such childlike faith in the man at the head that they are ready to indorse or approve anything he may do.

"A director should be an active, not a passive force. He should understand the affairs of the corporation to which he gives the prestige of his name, at least to the extent of knowing the integrity of its designs and the absence of lawbreaking methods in its operation, and he should not accept positions which he can not fill in this comprehensive way.

"Through the control of voting strength resulting from stock ownership by other corporations, a few persons whose individual holdings were small in comparison with the volume of stock of the company were enabled to perpetuate their full control of the New Haven company.

"While the Connecticut laws require the majority of the directors to be residents of that State, the selection of Connecticut directors depends entirely upon the choice of the controlling and dominating interests in the company. In a similar manner the control of other great corporations is maintained by means of interlocking directorates.

"The handling of bank deposits and security sales of these corporations are massed in a few hands, carrying with them a power and domination over large amounts of banking capital as well as the control of great railroad systems. These and other evils as the result of interlocking directorates are now well recognized and known, and they have been emphasized by the disclosures of this investigation.

"FUNDS TO BE RECOVERED ON BEHALF OF THE STOCKHOLDERS.

"From the facts developed in this investigation, it would seem that there is little question concerning the recovery of a substantial amount of the stockholders' money that has been wasted. Several items of this nature have already been suggested herein and will be briefly summarized :

Overpaid Perry and Thorne in commissions.....	\$303,750.00
Illegally spent in obtaining Westchester franchise changes.....	1,524,072.77
In the Billard transaction.....	2,748,700.00

"NOTE.—The money with which Billard acquired the 15,755 additional shares of common stock and 5,826 shares of preferred stock of the Boston & Maine Railroad was furnished by the New England Navigation Co. This stock was turned back to the navigation company for \$3,370,082. It would seem that a suit by stockholders for the recovery of the profit, if any was made by Billard in the transactions involving these additional shares, could be also maintained.

"If any expenditures were made in violation of the antitrust laws of the United States, are not such expenditures ultra vires and is it not the legal obligation of the directors to satisfy out of their own fortunes any loss which results to the company?

"These are all pertinent questions in the light of the developments brought about by this investigation.

"Only lawful expenditures are authorized.

"All illegal disbursements are ultra vires.

"Directors can not without accountability deplete a corporate treasury in ventures which are in violation of the laws of the land.

"DIRECTORS CONSCIOUSLY TRANSGRESSING ANTIMONOPOLY LAWS.

"The evidence shows that in pursuance of the policy of transportation monopoly the New Haven purchased the Connecticut trolleys, the Rhode Island trolleys, the Massachusetts trolleys, steamship lines, the Boston & Maine Railroad, and other means of transportation that were available and purchasable. That this plan was done in violation of the Federal statute it seems quite clear, for competition was sought to be destroyed. That the directors were conscious they were proceeding along lines that were probably inhibited by law is evidenced by the testimony of Director Elton, that as each line was purchased some one would ask the question in the board of directors if it were not in violation of law, and that Mr. Robbins, general attorney for the New Haven, would state to the board that the New Haven charter permitted them to do anything.

"It appears, therefore, that not only were those consolidations contrary to law, but these directors were cognizant of that fact, and contented themselves with the advice of counsel that under the company's charter it could do anything it pleased.

"Evidence of wrongdoing such as was disclosed in this hearing is difficult to obtain. Men do not conduct such transactions in the open, but rather in secret and in the dark. Only those involved, as a rule, have direct information. So some of the evidence of necessity must come through participants.

"NEW HAVEN MONOPOLY CORRUPT.

"This investigation has demonstrated that the monopoly theory of those controlling the New Haven was unsound and mischievous in its effects. To achieve such monopoly meant the reckless and scandalous expenditure of money; it meant the attempt to control public opinion; corruption of government; the attempt to pervert the political and economic instincts of the people in insolent defiance of law. Through exposure of the methods of this monopoly the invisible government which has gone far in its efforts to dominate New England has been made visible. It has been clearly proven how public opinion was

distorted; how officials who were needed and who could be bought were bought; how newspapers that could be subsidized were subsidized; how a college professor and publicists secretly accepted money from the New Haven while masking as a representative of a great American university and as the guardians of the interests of the people; how agencies of information to the public were prostituted wherever they could be prostituted in order to carry out a scheme of private transportation monopoly imperial in its scope.

"DIRECTORS CRIMINALLY NEGLIGENT.

"It is inconceivable that these wrongs could have gone on without interference if the members of the board of directors had been true to the faith they owed the stockholders. A number of directors appear in many instances to have voted without knowledge and to have approved the expenditure of many millions without information. According to the testimony of some of the directors, they merely approved what had been done by some committee or by some officer of the company. The directors' minutes reveal that it was largely a body for ratification and not authorization, as the law intended a board of directors should be. None of the directors would have been so careless in the handling of his own money as the evidence demonstrates they were in dealing with the money of other people. The directors actively or passively acquiesced in the efforts of the Mellen-Morgan-Rockefeller régime to extend the domination of this corporation over the whole transportation field in New England.

"If these directors who were faithless to their stewardship were held responsible in the courts and at the bar of public opinion for the failure to do those things they should have done, the lesson to directors who do not direct would be very salutary.

"Most of the directors of the New Haven accepted their responsibilities lightly. They failed to realize that their names gave confidence to the public and that their connection with the corporation led the public to invest. When these directors were negligent and serious losses resulted therefrom they were guilty of a grave dereliction of duty and a breach of trust that was morally wrong and criminal in its fruits.

"Directors should be made individually liable to civil and criminal laws for the manner in which they discharge their trust. A corporation can be no better or worse than those who operate it. It should be just as grave a crime to plunder stockholders or the public through a railroad corporation as it is to personally rob an individual.

"SUBSIDIARY CORPORATIONS CONDEMNED.

"It was found in the investigation of the New Haven System that there were 336 subsidiary corporations, and the books of the New Haven road proper reflect only a small part of the actual financial transactions of the railroad. Many of these subsidiary corporations served no purpose save an evil one. They were used to cover up transactions that would not bear scrutiny, and to keep from the eyes of public officials matters that were sought to be kept secret. The commission should have the power to examine not only the books, records, papers and correspondence of interstate carriers, but of subsidiary companies as well.

"REMEDY IN PUBLIC CONSCIENCE AND LAWS.

"The insuring of honesty throughout the management of the great railroads of the country is a most important question before the people to-day, and only when through exposure of wrongdoing and an awakened public conscience coupled with effective laws this result is produced, may railroading be placed upon the high level that it should occupy. The revelations in this record make it essential for the welfare of the Nation that the reckless and profligate financiering which has blighted this railroad system be ended, and until this is fully done there will be no assurance that the story of the New Haven will not be told again with the stockholders of some other railroad system as the victims."

THE LOUISVILLE & NASHVILLE SYSTEM.

This railway system was investigated by the Interstate Commerce Commission. The results of its investigation are to be found in the official report of the commission, No. 6319, dated February 16, 1915, entitled "In Re Financial"

Relations, Rates, and Practices of the Louisville & Nashville Railroad Co., the Nashville, Chattanooga & St. Louis Railway, and other Carriers."

This investigation was the result of a resolution of the United States Senate, prompted by complaints of the public respecting illegal acts of the above company and its subsidiaries, in which it requested the Interstate Commerce Commission to inquire into the financial affairs and capitalization of the company, its practices, and its efforts to illegally influence or control politics, legislation, and public opinion.

Because of the fact that some of the records and accounts of the company had been burned by them and the further fact that the commission was permitted by the company to inspect but part of those which remained, and the further fact that the officials of the road and other witnesses summoned to appear before the commission refused to testify, the commission was unable to ascertain but part of the facts. The testimony obtained was, however, sufficient to incriminate the company in many unlawful acts, among the most important of which were the violation of laws, both Federal and State, in respect to monopolies; the use of the stockholders' money to control legislation, politics, and the press; and the deceptive manner in which the accounts were kept respecting the capital investment and the operating expenses.

On account of the refusal of certain officials to testify before the commission regarding their acts, an appeal was made to the Supreme Court of the United States, which court, in December, 1917, issued a mandamus directing these witnesses to appear before the commission and testify. When this additional evidence is taken the result will be to make the investigation of greatly added interest.

As the stories of all the railway systems investigated by the commission are nearly identical and include practically all of the same illegal acts, we will, for lack of space, record only some of the principal features brought out in this case.

(On page 168 of the report is the following:

" METHOD OF THE INVESTIGATION.

" On November 10, 1913, immediately following the adoption of the Senate resolution above referred to, the commission ordered an investigation into the questions presented and served formal notice of this investigation upon the carriers concerned. Thereafter examiners of the commission were directed to examine the accounts, records, and memoranda of the Louisville & Nashville Railroad Co. and the Nashville, Chattanooga & St. Louis Railway with a view to securing all information in the files of these carriers that would throw light upon the questions contained in the Senate resolution. Certain obstructions have been placed in the way of the commission's examiners by the carriers, and these will be referred to later. The facts stated herein were secured from the annual and statistical reports and the contracts and tariffs on file with the commission, from such of the carriers' records and accounts as were voluntarily submitted by them; from testimony given at formal hearings in other cases before the commission; and in a few cases, that will be indicated, from interviews by the commission's examiners with railroad officials and other persons. The questions presented by the resolution will be stated and answered in numerical order, accompanied by such comment as seems necessary. Following the report will be found an appendix illustrating and supplementing certain of the answers.

" INTEREST OF THE LOUISVILLE & NASHVILLE RAILROAD CO. IN OTHER RAILROADS.

" The Louisville & Nashville Railroad Co. was incorporated in Kentucky in 1850. The line from Louisville to Nashville, 185.81 miles in length, was completed and placed in operation in 1859, forming the nucleus of the present system. Various extensions have since been constructed, aggregating 399.56 miles and making a total of 585.37 miles constructed by the company under its own charter. The annual report of this carrier to its stockholders of the year ended June 30, 1913, shows that it owned or controlled on that date 7,889.77 miles of road. A comparison of the miles of road constructed by this company under its own charter, with the total miles of road owned or controlled by it, well illustrates its activity in securing control of other railroads.

" In connection with the acquisition of the roads owned or controlled by the Louisville & Nashville Railroad Co. the following information is of interest:

" COST OF ROAD.

" Before the Louisville & Nashville advised the commission that such of its records as were made prior to August 23, 1906, would not be submitted for inspection, schedules of most of the cost of road accounts had been drawn from the ledgers preparatory to completing the analysis of the accounts from information to be secured from the journals and other records of original entry. While a complete analysis of these accounts was prevented by the Louisville & Nashville the preliminary analysis was sufficient to indicate that the cost of road account is heavily burdened with charges which do not represent actual construction cost. From such incomplete information it is concluded that at least \$16,000,000 shown in the cost of road accounts covers items which should not be charged as a part of the cost of this carrier's road, as follows:

Charges included in cost of road accounts but not expended for actual construction.

Discount on stock.....	\$1, 440, 018. 00
Other expenses in connection with the sale of stock.....	32, 671. 48
Discount on bonds.....	2, 192, 142. 57
Other expenses in connection with the sale of bonds.....	8, 537. 95
Interest and dividends.....	1, 917, 535. 13
Amounts credited to profit and loss:	
For reasons not stated.....	\$2, 640, 000. 00
To provide a surplus in order that a stock dividend of 100 per cent might be paid.....	6, 300, 000. 00
To raise book value of stock above the actual cost of acquirement.....	1, 422, 784. 00
To adjust difference between advances made for construction and par value of bonds received in settlement therefor.....	78, 447. 72
	<hr/> 10, 441, 231. 72
	16, 032, 136. 85

" The above statement is illustrative of the character of charges which the carrier has included in its cost of road account. A full examination of the carrier's accounts might disclose conditions under which some of the above amounts could properly be charged to cost of road account, but it is also possible that other improper items would be found which would greatly augment the amount shown.

" STOCK DIVIDENDS DECLARED.

" As shown in the above table, a stock dividend of 100 per cent was declared by the Louisville & Nashville on October 6, 1880. According to a corporate history of this railroad which was found in its office, 10 stock dividends were declared by this company between 1880 and 1891, as follows:

Date declared.	Rate.	Amount.
	Per cent.	
Oct. 8, 1861.....	$\frac{1}{2}$	(1)
Jan. 2, 1864.....	10	(1)
Nov. 16, 1867.....	40	32, 375. 56
Oct. 6, 1880.....	100	9, 055. 07
Jan. 9, 1888.....	2	} 3, 112. 47
July 26, 1888.....	2	
Jan. 9, 1889.....	2	
July 18, 1889.....	2	
Jan. 6, 1890.....	3	
Jan. 6, 1890.....	3	} 1, 957. 29
July 2, 1890.....	1.9	

¹ Not shown.

" To make possible the stock dividend of 100 per cent declared on October 6, 1880, the amount of surplus was arbitrarily increased by raising the book value of certain assets. From the corporate history above referred to it ap-

pears that when this dividend was declared the book value of the carrier's property exceeded its capital stock liability as follows:

On July 1, 1880, the cost of the main stem and branches amounted to.....	\$18,585,135
The capital stock then outstanding amounted to.....	9,065,000
Cost of main stem and branches in excess of outstanding stock was.....	9,520,135
On October 6, 1880, the board of directors declared a stock dividend of 100 per cent on the outstanding stock of \$9,065,000.....	9,065,000
Cost of main stem and branches in excess of stock liability as thus increased.....	455,135

"In declaring this stock dividend the directors were confronted with the fact that, notwithstanding the excess of cost of property over the capital stock liability, the entire net surplus on October 1, 1880, amounted to only \$3,871,383, which was insufficient to pay the full amount of the dividend. To meet this situation the assets of the company were revalued, and the board of directors voted that the book value of certain assets should be increased. Accordingly entries were made on the books of the company crediting the profit and loss account and correspondingly increasing the book value of the following assets in the amounts shown below:

Evansville, Henderson & Nashville division.....	\$2,300,000
Cecilia branch.....	800,000
New Orleans & Mobile stock.....	4,000,000
Stock in Eureka Co.....	40,000
Nashville & Decatur Railroad stock.....	68,546
Glasgow Railroad bonds.....	3,680

Total credit to profit and loss.....	7,212,226
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"The above-mentioned entries brought the profit and loss account to \$10,883,609, to which was charged the 100 per cent dividend of \$9,065,000.

"FOR THE PURPOSE OF MAINTAINING POLITICAL AND LEGISLATIVE AGENTS.

"Expenditures by the Louisville & Nashville during this period which appear to have been for the purpose of maintaining political and legislative agents amounted to \$23,274.41. This amount was distributed as follows:

Expenditures for securing copies of and information concerning legislative bills of particular interest to the Louisville & Nashville.....	\$1,413.58
Expenditures directly assignable to specific legislation.....	5,596.60
Contributions to various committees or associations for the purpose of influencing legislation.....	6,611.29
Expenditures on account of legislative agents in general.....	9,652.94

"FOR THE PURPOSE OF INFLUENCING PUBLIC SENTIMENT.

"The accounts of the Louisville & Nashville disclose that between September 1, 1906, and July 1, 1914, this carrier expended at least \$59,322.48 for the purpose of creating public sentiment in favor of its plans.

"Of this amount, over \$53,000 was spent in a publicity campaign in Alabama in the endeavor to mold public opinion through the medium of the press. Part of the balance was contributed by the Louisville & Nashville to a fund made up by numerous carriers to finance a campaign in Louisiana to prevent the change of tax laws. In order that the railroads concerned might preserve an outward appearance of indifference in regard to the legislation in question, the contributions for this purpose were placed in the hands of a bank to be disbursed by it as if in furtherance of banking interests. If the commission's examiners had been accorded access to the correspondence files of this carrier and to its accounts prior to 1906, there seems no doubt that information as to other substantial expenditures for the purposes referred to in the question would have been secured."

HAVING SUBJUGATED THE AMERICAN CITIZENS, AS THEY THOUGHT, AS DID CORTEZ AND PIZARRO OF OLD, TWO RAILROAD PRESIDENTS PROPOSED TO DIVIDE THE WESTERN HEMISPHERE BETWEEN THEM.

Some of the most interesting testimony, bordering upon the romantic days when Pizarro and Cortez subjugated the natives of the Western Hemisphere

about four centuries ago, is to be found in the testimony of two railroad presidents who having, as they thought, secured the subjection of the present American people as did those plunderers of old, felt the time had arrived when they could enjoy the realization of their dreams of conquest and accordingly, under the names of Pizarro and Cortez, Milton S. Smith, president of the Louisville & Nashville Railway System, and Samuel Spencer, president of the Southern Railway, gave vent to their feelings of pride and joy in some very interesting correspondence not included in the official report of the Interstate Commerce Commission, but to be found in the testimony taken by the commission and published as Senate Document 461, Sixty-fourth Congress, first session, entitled "Louisville & Nashville Railway Company hearings before the Interstate Commerce Commission," 1916. This correspondence, exemplifying the illimitable ambitions of railway financiers, is of great interest. The following extracts from the testimony of President Smith and the letters referred to appear on pages 369 to 372 of the document:

"MILTON S. SMITH was called as a witness, and being first duly sworn testified as follows:

"Mr. FOLK. Your name is Milton H. Smith?

"Mr. SMITH. Yes, sir.

"Mr. FOLK. You are the president of the Louisville & Nashville Railroad Co.?

"Mr. SMITH. Yes, sir.

" AFTER RECESS.

"The hearing was resumed at 2 o'clock p. m.

"MILTON H. SMITH resumed the stand and testified further as follows:

"Mr. FOLK. Mr. Smith, do you know who Pizarro was?

"Mr. SMITH. I don't know much about him.

"Mr. FOLK. He was the conqueror of Peru. Do you know who Cortez was?

"Mr. SMITH. Cortez had something to do with Mexico, hadn't he?

"Mr. FOLK. He was the conqueror of Mexico.

"Mr. SMITH. Well, I have not read about him for a great many years—probably 40 or 50.

"Mr. FOLK. And they met at the Court of Spain along in 1500 and agreed to divide up this new world.

"Mr. SMITH. Yes. Well, Prescott knew a great deal more about them than I do.

"Mr. FOLK. Now, then, we come—

"Mr. SMITH. You might incorporate Prescott's history.

"Mr. FOLK (continuing). To President Smith, of the Louisville & Nashville Railroad—

"Mr. SMITH. Yes.

"Mr. FOLK (continuing). And President Spencer, of the Southern Railway.

"Mr. SMITH. Yes.

"Mr. FOLK. After that conference between you and Mr. Spencer you had considerable correspondence with Mr. Spencer in relation to the distribution of this territory under that agreement, did you not?

"Mr. SMITH. There was no division of territory, and I do not know that we had any correspondence on the subject. I don't see why there should have been, but there may have been. He, as representing the Southern Railway, proceeded, to complete the organization of the Southern Railway, and he did not in any way interfere with the plans or the policy of the Louisville & Nashville Railroad Co., because the Louisville & Nashville Railroad Co. did not want any of those roads.

"Mr. FOLK. Did you ever hear of the conqueror Pizarro?

"Mr. SMITH. Yes; Pizarro and Cortez.

"Mr. FOLK. And you were Pizarro, were you not?

"Mr. SMITH. I didn't get even a piece of the Isthmus of Panama.

"Mr. FOLK. But you were Pizarro, were you not?

"Mr. SMITH. I wasn't anything. I was a nonentity in the transactions.

"Mr. FOLK. Did you designate yourself as 'Pizarro' and Mr. Spencer as 'Cortez'?

"Mr. SMITH. Don't give me credit for any such humor as that. That originated with a lawyer in Louisville, a Mr. George Davie, who used that in some way. I never heard of it until after that.

* * * * *

'Mr. FOLK. A letter from President Smith of the Louisville & Nashville Railroad to President Spencer of the Southern Railway [reading]:

[Personal and confidential.]

ON PENNSYLVANIA RAILROAD TRAIN, No. 21,
February 22, 1896.

MUEL SPENCER, Esq.,
President Southern Railway,
69 Broadway, New York City.

DEAR SIR:

ZARRO. How shall we divide the New World?

ORTEZ. I will take North America and you can have all of South America, but —, and neither of us will do anything to the Isthmus without notice and cooperation of the other.

ZARRO. While Patagonia is not a very large or important part of the world, perhaps, it is as much as I can tote.

I refer to typewritten report of our interview at Kenesaw, Ga., on October 28, 1894, and to the interviews and correspondence that have taken place since that date, and to that portion of our interview of this morning relating to the future of certain railroads that are, or may be tributary or competitive roads controlled by the L. & N. R. R. and the Southern Ry.

Why is it not well to review the subject and perhaps make our understanding more specific.

Our affairs, since our interview in October, 1894, progressed with rapidity, without, so far as I know, encountering serious difficulties. You have read the G. S. & F., the Atlanta & Florida, and the Central Railroad has reorganized in accordance with your plans.

* * * * *

I suggest that the L. & N. R. R. Co. do not purchase the R. N. I. & B. proposing leaving you to do as you please, and that you decline to purchase or to let anyone to purchase in your interest the Kentucky Midland property, and let us do as we please.

* * * * *

Yours, truly,

_____, President.

Letter from Samuel Spencer, president of the Southern Railway, to M. H. Folke, president of the Louisville & Nashville Railroad Co.:

NEW YORK, February 29, 1896.

H. SMITH,
President L. & N. R. R., Louisville, Ky.

SIR: Your letter of the 22d instant.

Since our last conversation, the division of the New World between us has made some progress.

Yes; you seem to have acquired Patagonia, and I have secured a considerable part of North America which touched my former territory, but it is to me you have acquired a considerable neck of the Isthmus, which is the connecting link between us. Was it understood that connecting links which touch both of us should be a matter of consultation before acting or not?

I agreed that it is desirable to renew the subject and, if possible, to make our understanding more specific. The principles on which this understanding should be based are:

That neither the L. & N. nor the Southern shall acquire lines in the territory of the other, and that lines connecting with or touching one and not the other shall be regarded as in the territory of the one which they connect or

that neither will acquire lines allied by former ownership, lease, or otherwise, to the other, and which at the moment are not controlled by reason of reorganizations or other cause.

That neither will acquire lines which connect with or touch both, either directly or through subordinate or controlled lines, without previous consultation. If possible, agreement.

That neither will foster the construction of new lines or the completion of existing ones into the territory of the other, but when questions with

reference to such lines arise, we shall proceed by agreement with each other. If possible.

Will you please consider this and say if such a declaration of principles is satisfactory?

Yours, very truly,

S. SPENCER, *President.*

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY CO.

Having reviewed some of the principal transactions of the New York, New Haven & Hartford Railroad Co. in defrauding its stockholders and the public, extracts will now be submitted from the official report of the Interstate Commerce Commission, No. 6834, dated July 31, 1915, entitled "In Re Financial Transactions, History, and Operation of the Chicago, Rock Island & Pacific Railway Co."

Owing to the limits of space available in this statement to Congress, and having gone into the transactions previously investigated in considerable detail, we will content ourselves with brief extracts from the official report just mentioned, which, when read in full, discloses a duplication of the illegal acts of the other systems investigated, together with some new details respecting the salaries of its officers and the manner in which they abstracted, for their private uses, from the company treasury, large sums without accounting therefor. The same system of false accounting, extravagance, waste, and the use of the stockholders' money for controlling politics and the press and for other illegal acts is found in the official report of the commission.

The result of these illegal practices was to reduce the value of the stock, which in 1902 was \$200 a share, to \$20 in 1914, and to put the road in the hands of a receiver—all in the private interests of a minority of its directors for the purpose of further exploiting the stockholders.

The following brief sketch of the system is taken from pages 43 to 44:

"In 1902 the main line of the Chicago, Rock Island & Pacific Railway Co. extended from Chicago to Denver, with branch lines to St. Paul, Minneapolis, and Kansas City. The territory served is one of the richest and most prosperous in the country and the system's ramification of branch lines insures to it a large volume of tonnage. It was then thriving and its prospects were promising, its stock selling in the markets of the world at more than \$200 a share. In 1914 the shares had fallen to \$20, and the road is now in receivers' hands. The evidence shows that the earnings of the railway company have steadily increased, and that in 1914 they were the largest in its history.

"The results of the management, which is the subject of this investigation, may be seen from the statement above made as to the market value of the stock, and from the table below, showing the capitalization, indebtedness, and operating accounts for the years 1901 and 1914:

	1901	1914
Capital stock.....	\$49,921,400.00	\$74,995,122.32
Funded debt.....	63,538,000.00	225,246,000.00
Loans payable.....	None.	3,500,000.00
Operating revenue.....	26,075,574.00	65,848,258.00
Operating expenses.....	17,098,066.00	49,517,948.00
Interest on funded debt.....	2,931,980.00	9,934,168.00
Rentals.....	473,962.00	1,881,652.00
Net income.....	5,308,519.00	395,915.00
Surplus.....	10,263,184.55	6,264,288.54
Mileage owned.....	3,128	5.37
Mileage operated.....	3,772	7.29

THE DIRECTORS PAID A LARGE SUM TO HAVE A SUIT SUPPRESSED WHICH WOULD HAVE EXPOSED THEIR ILLEGAL TRANSACTIONS.

On page 46 occurs the following:

"A significant transaction at this time is that growing out of the action of C. H. Venner, a stockholder of the railway company. He made demands upon the officers of the railway company in December, 1902, and in January, 1903, for a list of its shareholders. Being ignored he instituted, on January 31, 1903,

a proceeding in a State court of Illinois to enjoin the organization of the holding companies and the exchange of railway company stock for their securities. In February and March, 1904, the railway company paid Venner \$291,000, ostensibly in consideration of his delivery to it of securities of the New Jersey company and of the railway company valued at \$91,000 and stock of the Nebraska Central Railway and of the Nebraska Construction Co. of a nominal value of \$200,000. Thereupon the suit to restrain the holding companies' plan was dismissed. Neither the Nebraska Central Railway Co. nor the Nebraska Construction Co. had any road or other tangible assets, and their stock is therefore considered to be without value. The conclusion is obvious that the payments to Venner were in consideration of his refraining from further prosecuting in the courts his opposition to the syndicate plans. The railway company incurred in this litigation expenses amounting to about \$17,000."

COMPENSATION AND PECULATIONS OF OFFICERS WHO DEFEND SALARIES OF \$50,000 TO \$75,000 FOR THEMSELVES, BUT ASSIGN THE WAGES OF CLERKS, TELEGRAPH OPERATORS, CONDUCTORS, AND BRAKEMEN AS THE REASON FOR THE FINANCIAL TROUBLES OF THE ROAD—ONE OFFICER TAKES A "BONUS" OF \$500,000 IN ADDITION TO \$75,000 SALARY.

On pages 47-50 is the following:

" SALARIES OF AND CONTRIBUTIONS TO OFFICERS AND DIRECTORS.

" The salaries paid to some of the principal officers at various periods were as follows:

	Per annum.
H. U. Mudge, president.....	\$60,000
L. F. Loree, chairman executive committee (one-half to be paid by the Frisco).....	75,000
R. A. Jackson, vice president and general solicitor.....	50,000
R. R. Cable, member of board of directors.....	32,000
W. B. Leeds, president.....	32,000
B. L. Winchell, president.....	40,000
B. F. Yoakum, chairman executive committee.....	30,000
Daniel G. Reid, chairman board of directors.....	32,000
C. H. Warren, first vice president.....	35,000

" W. G. Purdy, upon his retirement from the presidency, was given two years' salary at \$22,500 per annum.

" Mr. Mudge, president of the railway company and now one of the receivers, asserted that the troubles of the railway were in a measure due to increase of wages and governmental regulations. When asked what wages he referred to as being increased he pointed out the wages of clerks, telegraph operators, conductors, and brakemen. While he regarded the wages of these minor employees as having partially sapped the financial strength of the railway, he declared that the salaries paid to the higher officers of the company had no appreciable effect on its expenses.

" D. G. Reid upon the witness stand was interrogated and answered as follows:

" 'Question. Mr. Reid, do you think these men earned these high salaries?

" 'Answer. I do not think there is a man who did not earn more than he was getting.

" 'Question. In other words, you defend paying high salaries?

" 'Answer. I defend nothing. Here is 8,000 miles of railway; a man who can run 8,000 miles of railroad is worth all he can get.'

" Many large contributions were made to officers and directors of the railway company. George T. Boggs, a director and secretary to the board of directors of the railway company, and also a director in the two holding companies, admitted that he served in these capacities merely as a dummy for the syndicate. On the question of the rights of the public to have corporate funds of common carriers properly applied, he testified as follows:

" 'Question. Do you consider that the directors of a railway company, a public-service corporation, have the right to do whatever they please with the money of the railway company?

" 'Answer. As in their judgment seemed right; yes.

"Question. Did it ever occur to you that the money in the treasury of the railway company was the result of taxation of the public in passenger and freight tariffs, and that the public had an interest in the funds in the treasury?"

"Answer. I don't know that I ever thought of it particularly."

"Question. And that the public had a concern in the funds of the railway company not being dissipated in order that they might be applied to improvements and betterments and to proper purposes?"

"Answer. I never considered that they were dissipated."

"Question. And did it ever occur to you that in taking money from the treasury of the railway company, a public-service corporation, an additional burden was placed upon the passenger and freight traffic in order to make good the loss?"

"Answer. No; I never thought of it in that light."

"Question. You don't believe it now, do you?"

"Answer. No."

"This opinion was also expressed in effect by other officers and directors. It appeared to be the idea of those in control of the railway that it was no concern of the public what became of the corporate funds so long as rates were reasonable. Those stating this opinion apparently did not take into consideration the fact that if the funds derived from transportation services are expended wastefully or corruptly the inevitable result must be either increased charges in order to enable the railway company to obtain money to pay operating expenses or bankruptcy."

"Following are specific instances shown of record of the contributions referred to:

"J. E. Gorman, first vice president, in charge of freight and passenger traffic, was secretly paid \$18,750 per annum, making his total compensation \$43,750, whereas the pay roll showed \$25,000."

"C. A. Morse, chief engineer, received a salary of \$15,000 per annum and a secret bonus of \$3,000 on the first of each year."

"Upon the retirement of R. A. Jackson as general solicitor he was given \$100,000 in cash."

"As an inducement to L. F. Loree, chairman of the executive committee, to relinquish, after 10 months' service, a joint contract with the railway company and the Frisco, under which he was to receive a salary of \$75,000 per annum for a period of five years and in addition was to be paid a bonus of \$500,000 at the expiration of the contract, he was given bonds of the railway company of a par value of \$450,000. This was borne equally by the two companies and the proportion of the railway company was charged to profit and loss. The total amount borne by the railway company in this transaction exceeded \$250,000."

"C. H. Warren, vice president, was given by the railway company \$150,000 in par value of the common stock and \$105,000 in par value of the preferred stock of the New Jersey company and \$50,000 in cash. There was no board authorization for the latter expenditure, the item being represented in the records of the railway company merely by a voucher signed by D. G. Reid."

"R. R. Cable, a member of the executive committee, received from the railway company \$30,000 in bonds of the Iowa company, then worth \$24,500, for his services in the acquisition of the Burlington, Cedar Rapids & Northern Railway Co., and he was paid by the latter company \$85,000 in the same transaction. Mr. Cable also received another contribution, which will be referred to later."

"Robert Mather, vice president, was given \$25,000 in cash."

"George T. Boggs, director and secretary of the board of directors of the railway company, was given \$15,000 in cash when he retired from the secretaryship of the railway company."

"As hereinbefore indicated, when the capital stock of the railway company was increased to \$75,000,000, shares of the par value of \$880,500 were placed in the name of the president, to be thereafter distributed in accordance with the following resolution of the executive committee passed at a meeting held in New York July 1, 1902:

"Resolved, That such portion as the president may determine of the shares of the increased capital stock of the company not required for the purpose of the foregoing resolutions shall be disposed of at par by the president for the benefit of such officers of the company as the president shall elect and determine."

"This stock was later exchanged for securities of the Iowa and New Jersey companies in the same manner as was stock of the stockholders of the railway company."

"Following this exchange R. R. Cable received securities of a market value of \$368,300 for which he paid \$200,000.

"H. A. Parker, first vice president, received securities then worth \$27,900, for which he paid but \$15,000.

"Robert Mather received securities of a market value of \$145,912 above his payments therefor.

"The contributions to officials of the railway company in excess of their salaries aggregated about a million dollars.

"IRREGULAR VOUCHER PAYMENTS.

"Unexplained vouchers for amounts aggregating \$72,523.45 were disbursed to the officers of the railway company for purposes not clearly defined. One such voucher for \$6,823.12 was drawn apparently to reimburse W. H. Moore for losses sustained by him in "supporting the market while bonds of the railway company were being sold." The voucher was certified by D. G. Reid, 'for the benefit of the railway company.' No papers were attached to the voucher and no other information was available with respect to the disbursement.

"Another voucher in favor of the Liberty National Bank of New York City, in exchange for a cashier's check issued to Robert Mather for \$25,000, is charged to 'general expenses' under 'operating expenses.' This voucher refers to a miscellaneous file shown by the index thereto to have comprehended 'contributions to campaign committee.' The file, however, was not produced, and a diligent effort on the part of the accountants to secure it was unavailing. Without this file it is impossible to state the purpose for which the money was expended, but the generalization 'contributions to campaign committee,' in the light of the practices indulged in by the syndicate in question, is clearly suggestive.

"The books of the railway company reveal payments aggregating \$44,066.05 to the Denver Post. The vouchers attached read, 'for advertising in editorial and news columns.' Other entries show that three of these vouchers, aggregating \$20,000, cover a refund that this newspaper received at the rate of 25 cents per hundred on its freight carried over the lines of the railway company from points in Wisconsin.

"Another voucher is for \$50,000 to S. M. Felton, for the railway's proportion of amount 'paid by E. H. Harriman and his associates for money expended by them to secure the discontinuance of a line of road being constructed in 1900 between Peoria, Ill., and Clinton, Iowa, as per agreement between R. R. Cable, chairman of the board, and E. H. Harriman.'"

MALADMINISTRATION COSTS THE STOCKHOLDERS \$20,000,000.

On pages 55-56 is the following:

"AGGREGATE OF LOSSES.

"The aggregate losses sustained by the railway company in connection with the foregoing transactions may be summarized as follows:

Expenses of maintaining and housing holding companies, more than.....	\$290,000.00
Frisco deal, approximately.....	6,500,000.00
Alton deal, approximately.....	6,370,000.00
Trinity & Brazos Valley Railway deal, more than.....	4,500,000.00
Consolidated Indiana and Dering coal companies, at least.....	1,300,000.00
Contributions or gratuities to officers and directors, about.....	1,000,000.00
Venner transaction.....	217,000.00
Miscellaneous and unexplained expenditures.....	72,523.45

"These items show an aggregate loss to the railway company of more than \$20,000,000. In addition thereto it is to be noted that prior to June 30, 1914, the railway company paid to financial institutions, in connection with the issuance of bonds, commissions aggregating more than \$1,800,000, and suffered discounts of more than \$17,700,000.

"INDIVIDUAL PROFITS OF PROMOTERS, OFFICERS, AND DIRECTORS OF THE HOLDING COMPANIES.

"The amount of gains accruing to W. B. Leeds, I. Reid, W. H. Moore, and J. H. Moore through their control and manipulation of the railway company are probably not ascertainable. Reid, when interrogated with a view to ascertaining his profits from the various transactions, explained that he always burned his books at the end of each month.

"The quotations placed in the record from the stock market of the New Jersey company stock and the railway company stock showed wide fluctuations. Whatever have been the gains realized by these persons, it is certain that the present holders of the stocks and bonds of the holding companies have that which is of little or no value.

"REPORTS TO STOCKHOLDERS.

"Misrepresentation of assets in reports to stockholders appears to have been a practice of the directors of the railway company. On June 30, 1904, a book surplus was claimed for the railway company of \$22,343,955.26. By June 30, 1914, the company conceded a reduction of this surplus to \$6,189,841.08, and even this amount was fictitious."

BANKRUPTCY AND RECEIVERSHIP SECRETLY PLANNED AND EFFECTED BY CONSPIRACY OF MINORITY OF DIRECTORS AND GENERAL COUNSEL TO DEFAUD STOCKHOLDERS.

The following extracts concerning the wrecking of this road is but one of the many receiverships purposely and needlessly effected for the robbing of the stockholders by those in control.

On pages 58 to 61 the official report gives a history of the bankruptcy transactions and their conclusions thereupon respecting the frauds practiced upon the stockholders, the rightful duties of the railway officials, and laws for preventing a continuance of former abuses:

"RECEIVERSHIP.

"The syndicate decided to put the railway into a receivership. The general counsel of the railway company, at the suggestion of W. H. Moore, a member of the syndicate, drew the bill asking for a receivership and engaged an attorney ostensibly to represent the other side. The bill was placed in the hands of this attorney with the name of the complainant omitted, and he was instructed by the general counsel to locate some creditor of the railway company willing to act as complainant. There was an agreement between the general counsel and this attorney as to the parties the latter would recommend to the court as receivers. The general counsel agreeing to instruct the attorney appearing for the railway company to acquiesce in the recommendations so made.

"The board of directors of the railway company was not informed of the intention to file a bill for receivership, and at no meeting of the board was any authority ever given for such action. Members of the board of directors not in the confidence of the syndicate were kept in ignorance of the fact that such a bill had been prepared. The stockholders had no information of the purpose to put the railway company into a receivership, although a stockholders' meeting was held after the date upon which the receivership bill was completed by the general counsel, and this general counsel attended the meeting. According to the testimony, the bill was completed by the general counsel March 29, 1915, and the fact that it was to be filed whenever desired by those in authority was known only to certain insiders. The testimony clearly establishes the fact that the railway company could easily have paid the debt of \$16,000 upon which the receivership application was based, and that arrangements probably could have been made to meet all pressing obligations of the railway company.

"It will be remembered that the bill was completed by the general counsel on March 29, this fact being known only to a special few. The bill was filed April 20. The records of the New York stock market reveal that the railway stock was inactive until the day this bill was completed, March 29. Then the stock began to be largely dealt in, and the price increased from \$20 to \$39 a share. When the bill was filed and receivers were appointed the stock dropped from \$39 to \$20 a share.

"The daily sales and the selling prices of the market stock from March 22, 1915, to April 20, 1915, are shown below:

Daily sales and selling prices of the Chicago, Rock Island & Pacific Railway Co. stock as reported by the Wall Street Journal.

Date of sale.	Number of shares sold.	Selling price.		Date of sale.	Number of shares sold.	Selling price.	
		High.	Low.			High.	Low.
1915.				1915.			
Mar. 22.....	400	21½	20¾	Apr. 8.....	14,250	32½	30½
Mar. 23.....	2,700	21½	20	Apr. 9.....	68,900	35½	31
Mar. 24.....	2,850	22½	21½	Apr. 10.....	68,000	39	34½
Mar. 25.....	900	22½	21½	Apr. 12.....	18,600	36	34½
Mar. 26.....	7,050	21½	19½	Apr. 13.....	16,556	35½	32½
Mar. 27.....	5,400	21½	19½	Apr. 14.....	78,000	38½	34½
Mar. 29.....	28,380	26	19½	Apr. 15.....	45,600	38½	35½
Mar. 30.....	73,576	31½	28	Apr. 16.....	32,900	38½	35½
Mar. 31.....	106,800	36½	31½	Apr. 17.....	16,100	38	36½
Apr. 1.....	62,642	33½	28½	Apr. 19.....	37,700	33½	33½
Apr. 2 (holiday).....				Apr. 20.....	251,400	32½	21½
Apr. 3.....	18,700	29½	26½				
Apr. 5.....	15,000	30	27½				
Apr. 6.....	6,200	29½	27½	Total sales within 30 days.....	1,019,584		
Apr. 7.....	41,000	32½	28				

Total capitalization, \$75,000,000, represented by 750,000 shares.

Total sales within 30 days preceding receivership, 1,019,584 shares.

The sales aggregated more than one and one-third times the total capitalization of the railway.

"It is a forceful commentary on the methods by which a great railway may be manipulated into a receivership when it is noted that the general counsel after drawing the bill for a receivership, sold his stock, and the local counsel, who represented the railway company in the receivership proceedings, owned no stock in the railway company, and that none of those directly participating in the receivership proceedings had any financial interest in the railway company. The real owners of the railway, the stockholders, the security holders, and the directors, except those composing the syndicate and in its confidence, were in ignorance of the receivership application. Mr. Mudge, former president of the railway company, is one of the receivers.

"The general counsel for the railway company, who planned the receivership in obedience to the will of the syndicate, is now counsel for the receivers.

"The property of the railway company will be called upon for many years to make up the drain upon its resources resulting from transactions outside the proper sphere in which stockholders had a right to suppose their moneys were invested. This record emphasizes the need of railway directors who actually direct. There are too many passive directors who acquiesce in what is being done without knowledge and without investigation. A director of a railroad is a quasi public official who occupies a position of trust. A director who submits blindly to the exploitation of his company is a party to its undoing and he should be held responsible to the same extent as if he had been a principal instead of an accessory before the fact. The greater his prominence the greater his responsibility and the greater his dereliction. Obviously a man of large affairs could not attend to all the details in intricate transactions, but it is inconceivable that a director of ordinary business prudence and sagacity would sanction large expenditures without an inquiry as to the purposes of such disbursements. So long as this situation exists, however, it suggests the need of a law to charge such directors with individual responsibility for the dissipation of corporate funds."

The Clayton antitrust act, which becomes effective October 15, 1916, will make it unlawful for any person at the same time to be a director in two or more competing corporations, any one of which has a capital, surplus, or undivided profits aggregating more than \$1,000,000, but common carriers are expressly exempted from its application. It should be just as grave an offense for an official of a railway to be faithless to his trust for financial gain as it is for an elected official of the government to betray his trust for money reward.

By this case the need of some limitations on the issuance of stocks and bonds by common carriers, whether directly or through holding company devices or otherwise, is again demonstrated.

THE PERE MARQUETTE AND CINCINNATI, HAMILTON & DAYTON.

The history of this railroad system in its gross mismanagement, maladministration, and the peculations of the great financiers who wrecked it is largely a counterpart of the history of the three systems whose rise and fall its power have already been sketched. Time will not permit going into the details of this interesting history, which is replete with startling instances of financial legerdemain. It is interesting to the people of Ohio and Michigan, the States in which these lines are laid, to learn of the pressure which was brought to bear upon the legislatures of these States to increase the rates of charge, the excuse that they were insufficient to pay legitimate revenue, whereas the investigations of the Interstate Commerce Commission clearly show that the troubles of this railway system were due entirely to the wild speculation and disregard of the principles of business ethics, practiced by reputable business concerns.

The following brief extracts are taken from the official report of the Interstate Commerce Commission, No. 6833, dated March 13, 1917, entitled "In re Pere Marquette Railroad Co. and Cincinnati, Hamilton & Dayton Railway."

One of the startling disclosures in this investigation is the ease and informality with which one man, in a leisure hour at his home, can, on a sheet of newspaper, either buy or sell a great railroad, as happened in the case of the Pere Marquette. After referring to instances of the maladministration of this system, showing losses of the stockholders of about \$16,000,000, the following story of the sale of this system is found in the report of the Interstate Commerce Commission on page 166:

"What had happened in the 24 hours meanwhile was that J. P. Morgan & Co. had met at the former's New York residence on September 7, 1905, and closed an agreement for the purchase by Morgan of Hollins's C. H. & D. stock holdings, involving an expenditure of some \$12,000,000. Francis Lynde Stetson was present as Morgan's counsel and wrote the agreement on a sheet of note paper. Its text follows and its significance will be further considered.

219 MADISON AVENUE.

September 9, 1905.

H. B. Hollins & Co. will sell and J. P. Morgan & Co. will purchase 56,000 shares of C., H. & D. R.R. Co. common stock at the price of 160 per cent with interest at the rate of 4½ per cent per annum from December 7, 1905, until date of delivery, all dividends to be credited against the interest and to J. P. Morgan & Co.

This delivery may be made by H. B. Hollins & Co. at any time, and must be made by them upon October 1, 1907, or at such time thereafter as shall be specified by J. P. Morgan & Co. by three months' notice in writing.

If so requested by H. B. Hollins & Co., J. P. Morgan & Co. will lend to them upon their obligations secured by C., H. & D. stock or syndicate subscriptions at 135 per cent such sums as they may find necessary to carry such stock or subscriptions, to an aggregate amount not exceeding 56,000 shares, the rate of interest to be 4½ per cent.

This contract and all obligations of J. P. Morgan & Co. may be terminated by them at any time after October 1, 1906, by three months' notice in writing by J. P. Morgan & Co.

J. P. MORGAN & CO.
H. B. HOLLINS & CO.

H. B. H. J. P. M.

In addition we gave H. B. H. & Co. order to buy about 16,000 sh. participations at about 135.¹

J. P. M.

The following extract from the financial history of this road, showing the falsification of its accounts, is found on page 155 of the commission's official report:

"FALSIFICATION OF ACCOUNTS DURING ZIMMERMAN-HOLLINS CONTROL.

"The following statement presents a condensed income account covering the year ended June 30, 1905, for the C., H. & D., including its proprietary line

¹ Pencil memorandum at bottom.

the Cincinnati, Indianapolis & Western, 1,038.24 miles operated, as recorded in the carrier's books of account:

Gross earnings from operation	\$8,008,917.65
Operating expenses	6,095,885.11
Income from operation	\$1,913,032.54
Losses	316,061.12
Net income from operation	1,596,971.42
Income from other sources	59,688.65
Gross income	1,656,660.07
Deductions from gross income:	
Rents paid for lease of road	517,288.35
Miscellaneous rents	372,273.11
Interest accrued on funded debt	1,009,515.63
Other deductions	348.52
Total deduction from income	1,899,425.61
Net deficit	242,765.54

The 4 per cent preferred stock bore guaranteed dividends which makes the value of the dividend more in the nature of a fixed charge than a division of profits. If these dividends are so considered, the net deficit for the year was \$969.20.

The foregoing income account bore little resemblance to the truth. The fact is that large sums properly chargeable to the income for 1905 were ordered charged to various other accounts and were so charged in a way to conceal the true state of the company's affairs. These entries violated commonly accepted accounting principles in such a flagrant manner as to make it evident that the purpose was to deliberately falsify the accounts in an effort to avoid showing the utter failure of the company to earn anywhere near its fixed charges."

After an exhaustive investigation of this great railway property, in which transactions covered 223 pages of closely printed matter, the commission set up its findings as follows, pages 217-223:

It was in this connection that J. P. Morgan & Co. became active in C., H. & D. affairs. That firm had for years been interested in the C., H. & D., having held some 32,000 shares of its common stock, or about one-fifth of its voting power, from 1901 up to July, 1904, when 20,000 shares were sold to the C., H. & D. syndicate. It has been the endeavor of Morgan & Co. throughout this proceeding to prove that they were not aware of the actual condition of these two roads when J. P. Morgan made the suggestion to President Wood, of the Erie, which resulted in the latter's purchase of the Hollins shares of C., H. & D. stock. We have stated in detail the many facts of record to the contrary. With all that the record shows as to the 'free hand' of the firm in making this purchase of the C., H. & D., we find no reason to doubt that the Morgan influence in Erie affairs which dictated that purchase, and the Morgan influence which so soon thereafter forced Morgan to release the firm its bad bargain. Through that recision of its contract of purchase the firm escaped all loss.

It has been suggested that Morgan & Co.'s participation in the Erie purchase was readily understood if they were the principals for whom H. B. Hollins had acted throughout. This record contains no evidence to indicate such; and its existence was unqualifiedly denied by the representative of Morgan & Co., who appeared before us.

It is difficult to comment upon what was done to these properties in 1904 and 1905 without applying to those who did it the terms which they richly

The promoters of the C., H. & D. syndicate of May 19, 1904, did not wish to wield the club of expected corporate control in order to force necessary reorganizations. Nor did they hesitate to pledge the credit of the C., H. & D. to further their own schemes. Only in degree were their schemes criminal than those perpetrated by their successors, the Zimmerman combination. The latter stopped at nothing, took every chance, and succeeded in their astounding coup of unloading their C., H. & D. holdings upon Morgan & Co. at \$160 per share, when the C., H. & D. and its controlled properties were then ready to fall of their own weight.

"SUMMARY AND CONCLUSIONS.

"In assembling the facts upon which the foregoing recital is based the commission, through its valuation accountants, had access to and inspected, prior to hearing, the accounts, records, and memoranda, including correspondence files, of the two respondents and three other railroads. Similar examination was made of accounts, records, and memoranda in the files of five banking institutions bearing on the transactions under investigation, and a restricted inspection was made of such papers on file with two other banking institutions. These various examinations were conducted in seven cities. Examination was also made of the files of State railroad commissions, and recourse was had to records and decisions in court cases. Without the use of all such data it would have been impossible to construct this report.

"This sordid tale has been told without adjectives. The facts speak for themselves, and they have been given in all their nakedness, without other ornament than such as would serve to tie them to other facts, also of record.

"Up to June 30, 1904, the railroad operation of the C., H. & D. was highly successful, particularly as contrasted with that of the Pere Marquette. The former was thus enabled to carry along unsuccessful subsidiaries, by advancing moneys to meet their needs, and was strong enough to bear the losses which had resulted from the manipulations of Ives and his associates in the late eighties. The predecessors of the latter were subjected to successive receiverships and reorganizations in the endeavor to escape from operating deficits. In the old C., H. & D., dividends were the rule. With the predecessors of the Pere Marquette they were the exception.

"Inflations of capital stock were incidents of the C., H. & D. consolidation in 1895 and of the Pere Marquette consolidation in 1900. This inflation was greater in the C., H. & D. than in the Pere Marquette because of their respective financial conditions. In neither case was it defensible.

"The exploitation in 1903, 1904, and 1905 of the Pere Marquette and the C., H. & D. was not an incident of railroad construction. The properties had long been established. Whatever control or regulation of the issue of railroad securities was exercised by the States in which these roads operate was inadequate to prevent the exploiting or to forestall subsequent hasty and unwise reorganization. To the extent that these flotations ultimately lodged in the hands of innocent investors, whether here or abroad, the public was deeply wronged. Whatever control or regulation was had of the properties and operations of the two roads was not sufficient to keep them in condition to satisfactorily serve the population dependent upon them. The result has been the same with each—financial disaster to the carriers, serious loss to the holders of their securities, deterioration of their physical properties, and a marked impairment of ability to perform their functions as public servants.

"Nothing disclosed in the record before us is to be more regretted than the readiness of great banking institutions in our financial centers to loan enormous sums of money upon exceedingly precarious security in aid of such schemes as have been devised in the wrecking of these railroads. Not only this, but the high officers of such institutions, while acting ostensibly as directors of the railroads, have in fact been little more than tools and dummies for the promoters. The trustees of other people's money seem to have had little compunction about violations of their trusts for the benefit of the promoters, and at their demand.

"Can the like of what has befallen these two roads be made impossible hereafter? Perhaps not entirely, so long as financial circles continue complaisant toward financial exploitations which prove successful. But it will help if minority stockholders are more watchful of their interests and if bondholders assert their rights before their security fades away for lack of upkeep, purposely neglected in order to pay interest and dividends unearned. It would in our opinion, render such exploitation more difficult if the issuance and marketing of all securities of common carriers were subject to Federal regulation. As to that we renew the recommendations repeatedly made to the Congress in our annual reports. We also point to the lesson, here again taught, that access to correspondence files is indispensable for a thorough and accurate understanding of the motives and purposes which underlie the formal entries made in accounts and records.

"Unwise management contributed to the downfall of these roads, but breach of trust by corporate officials, often for personal gain, was the main cause here as in the records developed in other investigations. (Consolidations and Con-

blinations of Carriers, 12 I. C. C., 277; the New England Investigation, 27 I. C. C., 560; St. Louis & San Francisco Railroad Investigation, 29 I. C. C., 130; Financial Investigation of N. Y., N. H. & H. R. R. Co., 31 I. C. C., 32; Financial Transactions C., R. I. & P. Ry. Co., 36 I. C. C., 43.) That downfall, with its deplorable consequences, can be traced only to betrayal within and not to compulsion from without. Neither rivalry, nor rate level, nor regulation, nor all combined, can be found on this record to have contributed in any appreciable degree to the disaster.

"In discussion of transportation conditions during the last two years or more much has been made of the fact that over 40,000 miles of our railroads were under receivership. A recent publication lists 69 railroads, among them the Pere Marquette and C., H. & D., as in the hands of receivers on December 31, 1916. Their combined operations cover 34,559 miles. Over 40 per cent of that mileage is in systems which, as shown by our investigations, have suffered principally from financial mismanagement and exploitation. Over 40 per cent more, of which a large part is located in Texas, is comprised in two southwestern systems. The remaining 5,800 miles are distributed among fifty-odd carriers in different parts of the country."

The CHAIRMAN. Now, Judge Cowan.

STATEMENT OF S. H. COWAN, FORT WORTH, TEX.

MR. COWAN. Mr. Chairman, I have just about waited until the meeting adjourned, it seems, in accommodating these gentlemen who have appeared before you, and it now seems that I have nobody here that I want to convince about anything. I think you gentlemen think about as I do about this, but for the purposes of the record I would desire to have the opportunity to present some views I have about this bill and the subject matter of the legislation. I trust you will give me the opportunity to do it.

Senator KELLOGG. Can we not hear Judge Cowan to-morrow or the next day?

Senator ROBINSON. No. We decided to close the hearings this afternoon. Judge Cowan has been here for a number of days.

MR. COWAN. I am too easy, is the trouble with me.

Senator ROBINSON. I have been waiting with a good deal of interest to hear you and I am satisfied that the other members have also, but you will understand that every member of the committee has some five or six other committees that he must attend, in part, and in addition to that, the Senate is in session and it is quite difficult to get a full attendance of the committee at any time.

MR. COWAN. I understand that perfectly, Mr. Chairman. I have been before these committees so often that it is a wonder to me that this committee has attended so constantly and given such constant attention as they have to it. It has been very unusual.

My name is S. H. Cowan; I reside in Fort Worth, Tex.; I am attorney for the American National Live Stock Association, which embraces within its representation practically all of the State organizations of live-stock producers in all of the States west of the Mississippi River, and has been in existence for a number of years, and I have represented it during all of that period in all of these matters pertaining to legislation affecting the live-stock business, and with respect to most of the principal controversies which have arisen pertaining to rates, regulations, and practices in transportation, as the term transportation is defined in the first section of the act to regulate commerce.

I am also the general counsel of the National Live-Stock Shippers' Protective League, which is an organization composed of all of the national and State organizations, through their national organizations, and some of them individually, of the live-stock producers and of the market organizations of live-stock commission men and dealers at all the principal markets of the United States and other shippers—having for its object mostly the subject of transportation as the name of the organization would indicate. In that, we bring together in a composite organization all of the live-stock interests of the country, and I should say that the organization more actively and in detail represents the interests of producers, shippers, and dealers than any other organization of any producing interest of the United States that I know of.

The men who are in control of these organizations as executive committee men are selected from the principal men of affairs in business from the various States, the names of which it is unnecessary for me to give.

At their annual meetings and at meetings of their executive committees, which are generally large, they give careful consideration to any matter which concerns them and do not go off half-cocked, as we commonly use that expression, but reliance may be placed upon whatever they give out in the way of resolutions, or otherwise—at least has the backing and judgment of men of affairs who have given the subject matter study.

It is the one interest which is organized to protect themselves with respect to transportation in securing the service and in reasonableness of rates who can not "pass the buck."

I mention that at the outset because it is of most extreme importance, considering the apparent effect that the educational campaign the railroads have had with respect of satisfying the minds of a great number of our best citizens in the country—our bankers and merchants and manufacturers and others, that the railroads have been badly treated and are bad off, and that the public expression of the character which are contained in the resolutions of our organization and others are not well founded.

I may say that they can not "pass the buck" for another reason, to which I wish to call particular attention, and that is, if the bill before you carries with it the power, and that power were exercised to advance the rates in order to secure money with which to pay for the exigencies of the war, it would be the most unequal and unjust tax which could be devised. It would be so upon its face. It would probably be very largely agreed to by shippers and thus carry with it great weight before Congress unless Congress analyzes the situation.

The manufacturer of steel or iron piping at Pittsburgh sells it f. o. b. The enormous steel traffic of this country that goes to the consumer, whether it be city or public works, railroad construction, or otherwise, do not themselves pay the freight, and it would be entirely immaterial to them whether the rate were raised or not, provided it were raised equally to their competitors. Now, that extends from such great institutions as that down to a jobbing house in Dallas, Tex., Minneapolis, or anywhere else that you might name. The traffic manager will appear before the Interstate Commerce Commission, as to which there are hundreds of instances, appearing to

testify, "Oh, yes; our people are willing for the railroads to have an advance in rates, provided we keep up the parity." And that is practically a universal thing with that class of merchants who can "pass the buck."

So the term "passing the buck" is probably the most significant and important new-coined and applicable phrase that can be found in the present slang language of our country.

No man ever fails to take advantage of the opportunity to do it. History records no instance of that sort. So that when we were having the hearing down here before the Interstate Commerce Commission on the proposal to advance the rates on fresh meat, packing-house products, and live stock from Chicago and Mississippi River crossings to the Atlantic seaboard there came upon the scene also the attorneys representing the packing houses, who announced before the commission, to the great satisfaction of our friends, certain of the railroad presidents on the Council of Defense, that they did not object to the advance in the rates if the Interstate Commerce Commission should find that the railroads needed it.

Well, I suppose not, because I suppose that that would find its way into the storage house in New York or Washington or Philadelphia.

But we did object because the live-stock shipper to Indianapolis, for example, to Pittsburgh, to Buffalo, to the slaughterhouse, has freight taken out of his account sales, whether he ships 10 miles at \$10 a car or 100 miles at \$25 a car or 1,000 miles at \$100 a car. His stock for the same quality brings the same price, and it is deducted out.

Mr. Thorne presented that in a general statement the other day, instancing live stock and grain.

I have tried a great number of these cases involving advances or proposed advances in rates from the various traffic districts of the country. Those larger cases generally arise from an action of the traffic committee in such districts. So far as I have been able to know, there is no case of the agricultural producer in this country where he does not actually have to pay the freight out of his pocket or it comes directly out of the price of what he sells, should he sell it at home. They are the only class of people that I know where the trade and commerce begins at the central market of the country, the price is fixed there, and like grain at Chicago, live stock at Chicago, or cantaloupe in New York, or onions in New York, and it is the price less the freight that the onion grower gets at Laredo, Tex., shipping in competition with the onion grower from Cuba or Bermuda.

So that the agricultural producers are singled out by this bill, not intentionally of course, but it would amount to that, for slaughter in a tax of that character.

I take this position: I believe you gentlemen, and all of you are experienced lawyers and certainly experienced in legislation and common affairs of men, will agree with the proposition that the standard of reasonableness is as much a standard of conduct as between a common carrier and his patrons, and the patron has as much right to it as he has to the right of self-defense, whether it is in the Constitution or not; and the statutes of every State, and now of the United States, fix that as the standard. The common law fixed it long before, and so it was held in a leading case, reviewed, however,

by the Supreme Court in *Lockwood versus New York Central Railroad*, 84 U. S., that the shipper does not occupy the same relation to the carrier in the matter of a contract that people do who have the freedom of contact between each other, and that the carrier—the carriers being composed of large and powerful corporations—can name the terms upon which the shipper must patronize the carrier or forego his business, and he chooses to accept whatever is offered to him, which the Supreme Court holds must be tested by what is reasonable.

Beginning there we come down through the entire category of cases of every character, with respect to rates and otherwise, and the term reasonable becomes the standard. I say, therefore, that if a railroad company, or any other carrier, or Congress, or the State legislature, shall impose a charge above what is reasonable, it is in the nature of a tax. It is unlawful, it is not the standard that the shipper is reasonably entitled to, it is not the standard which the public is entitled to, the railroad has no right to exact more, and the shipper is obliged to pay that.

Of course, we have the greatest difficulty in arriving at the figures as to what it amounts to, and therein is the field of controversy. But I am speaking now of the standard. I say, therefore, that the suggestion that has been made—and I may parenthetically remark that it is an astonishing proposition to me, coming from the source that it does—that under this bill the President, the Director General, or whoever executes this law might raise the rates for the purpose of producing revenue for the Government. In other words, exercise the taxing power, if they raise it beyond what is reasonable. Of course, you could not fix the standard of a reasonable rate by ascertaining how much money was needed by the Government for the war, because that would make the rates immoderately.

Senator KELLOGG. But suppose the President did do that, just as they do in Germany. Suppose he wanted to raise \$100,000,000 more money than the Government could reasonably raise by other taxation, and added it to the rates. What would be the remedy?

Mr. COWAN. You mean here?

Senator KELLOGG. The shippers would have no remedy, would they?

Mr. COWAN. Don't ship!

Senator KELLOGG. That is about the only remedy.

Mr. COWAN. He would have the remedy that was left, which was very well exemplified in a story that I know, which, if it is permitted, I will tell, and, without objection, I suppose it will be permitted.

Senator ROBINSON. If it is a good story, we will hear it.

Mr. COWAN. A sheepman at St. Angelo, Tex., a great friend of Col. Polk, the live-stock agent of the Santa Fe, who was located at Fort Worth, but "of Texas" himself, made it convenient always when he carried sheep to market—and he generally shipped to Chicago in those days—to come by Fort Worth and get drunk; and he and Col. Polk would have a good time, and he would take the passenger train, and sometimes catch up with the sheep before they got to Chicago; but on one occasion it happened that the sheep were laid out at Texarkana on some account, and they could not locate the old

gentleman by telegraph or otherwise, and finally they sent the sheep on anyhow, and they got into Chicago about eight days late.

Greer Mills & Co. sold them on the market, and they did not bring money enough to pay the charges. So Greer Mills & Co. telegraphed to this old gentleman to his home, and not knowing where to locate him they forwarded his telegram to Fort Worth, knowing his habits, in care of Col. Polk, and it reached him, though they found him in the absence of Col. Polk, and he hunted up the colonel and had the telegram and showed him the telegram, which was: "Sheep have arrived in very bad condition; sold, but did not bring money enough to pay charges. Remit money to cover." And he showed the telegram to Col. Polk, and he said: "Well, we had better get up an answer to that telegram." He says: "Oh, I have already answered it." He says: "What did you answer?" "I wired them, 'There aint no money; will ship more sheep.'"

That is the only way I know to meet the situation you speak of. But, of course, we do not want to invite a condition with respect to commercial traffic that renders that possible in the hands of any man, and no man ought to want it. There should be a limit beyond which an American citizen does not desire power for fear he might in some aberration of mind not use it right. I would not have such a power under any circumstances. It is wholly unnecessary with respect to rates.

I can not imagine a condition where the power should exist, but I say it is in its nature a taxing power, anyway, if it goes beyond what is a reasonable rate. It is worse than that. In this case it would accomplish levying a tax for the benefit of the railroads, because it is my contention that the bill invites a deficit if you adopt a standard return which is provided for in the bill. It can not fail to produce a deficit. There is no possibility of the greatest railroad man in the world so conducting this operation as proposed so as to avoid a deficit if you give the standard of return which is specified in the bill in the manner in which it is proposed to use it.

If I could do this country a great service in time of war, I know of no greater one that I could render than to argue the case and present it so as to convince the minds of honest men; and I know all of these gentlemen are honest, as Members of Congress and the Senate are. It will be a disruption—a destruction of business—and might as well have for its purpose the invitation to those who should see fit to do so to be slackers at the wheel.

Take, for example, the Santa Fe system, reaching from Chicago to the Gulf and to the Pacific—the best managed railroad, I think, that I know of. I do not say it is the best there is, but I know it is the best I know of. I know a great many of their employees from the bottom to the top, nearly all their principal officers, a great many of the conductors and trainmen, office men, agents. I have a brother who is traveling engineer on the Santa Fe. He does that work in order to stimulate business to see that every engineer does his work properly, that he keeps his engine properly, saving money for the Santa Fe Railroad, at a large salary.

You say to all of these employees—and it is equivalent to saying that, because we can not escape the facts, we always have to face facts—it is equivalent to saying to every employee: "You know

that it don't make any difference to the Santa Fe Railroad, or Mr. Ripley, or Mr. Storey, or Mr. Pettibone, or Mr. Chambers—it don't make any difference whether you move a car to-day or to-morrow or whether you load full or whether you fasten the door or what you do. If there is a loss there, why, we don't have to pay it. We get just as much money as we would otherwise."

Gentlemen, such a proposition is so amazing to me that I can not understand how it is presented by any man who desires to serve the good of a common country.

Senator KELLOGG. Let me ask you right there, Is that not inevitable in the way the roads have been taken over?

Mr. COWAN. That is what I have said. No man can operate these railroads under that guarantee without a deficit.

Senator KELLOGG. Very well. If the Government takes over the railroads and agrees to pay any definite sum, the men who are operating them, outside of their patriotic interests, have no interest to make the roads earn any particular sum at all.

Mr. COWAN. Not a bit; nor to save anything.

Senator KELLOGG. Would it not have been better to have authorized the railroads to operate as a unit under the direction of the Federal Government and keep what they earned, and if any one of them was damaged by reason of the Government's direction, then assess and pay the damage?

Mr. COWAN. I think so, Senator Kellogg. I think there are many plans that might have been adopted, but of course we are in a position now where we are facing and we are considering a bill, and it is not my object to undertake to prevent or stop the legislation to successfully operate these railroads.

My object is to aid, if I can, in the framing of the bill that will avoid the dangers and the difficulties and reach to a successful operation under the method that is proposed, and that is the reason I mention the danger that confronts us right at the threshold.

Senator GORE. According to that, the railroad organizations would soon be demoralized.

Mr. COWAN. It would. As I was just saying, it could not be otherwise, Senator. I have three farms—that is, I owe for three farms. I am just in about the fix the railroads are. I employ men down on those places and if I can not get a man to take my interest to heart and try to do something, I am losing half of his time, and it is difficult for me to find just where he wasted that time, but I go down there and I see no sign of him having done anything.

That is the great difficulty every farmer has or any man who has a farm who employs men on it, to get somebody who will actually take an interest and do the work.

I had a man who was so careless that in the cold weather that happened down there in November he let 40 pigs die, just froze to death at night because he paid no attention to them, and they cost a lot of money. That is another waste you see going on. It will be just that same thing from start to finish.

Taking the subject now of loss and damage. It is well known to every railroad lawyer in this country who has practiced before the Interstate Commerce Commission, and everyone who has handled the business out of his office in the practice before the courts, that

loss and damage, personal injury, and the like on a railroad is a very large item of operating expenses.

Perishable freight comprises a very large amount of the freight in the country. Calculated in ton-miles you would be surprised to find how much it is, and if loss and damage are not cared for with great strictness, not looked out for by a good supervisor, the men are not forced to perform their duty, it is a big item of operating expense.

I know one time on the T. & P. Railroad for two or three years the loss and damage on live stock was actually \$6 per car, whereas the Burlington was 40 cents in those same years.

The Santa Fe had about \$2 per car, and they put Mr. Brooks, who is here with the Food Commission, as general live-stock agent, and after meeting with the general officers of the Santa Fe in the operating departments, and with all the other western roads, we pointed out that they were feeding these live stock en route to market at their stockyards. You could not reach Kansas City without feeding, hardly at all. We found that they had stock pens leased out to men that were selling 20-cent hay at a dollar a bale, and of course they worked it along some way or other that all the crews would stop these trains and they were all fed, and they never got them in, and that caused an immense loss.

When the operating department found that out, then they set about to correct it. Mr. Brooks testified before the Interstate Commerce Commission that within one year he so reduced the claims on the Santa Fe Railroad for live-stock shipments that it was so small that he was ashamed to tell it. The fact is he reduced it to 50 cents per car.

That will never be done under this character of guarantee. I could pick out many instances that I know of that where under this character of operation there is no incentive to efficiency; there is no incentive to get traffic, no incentive to accommodate the public. The organization would simply go to wreck, it would go on the rocks, and there would be nobody that would want to prevent embargo, nobody would want to get over the roads, because they would want to make all the overtime they could.

Now, they would say, "How do you propose to remedy it?" That has been asked me. I have talked to Mr. Hines about this. He has nothing to do with the bill. I told him it would absolutely wreck these railroads and wreck their organization, and if the war ended in a year and we turned the railroads back that they would not get over it for 10 years. And I believe, Senator Kellogg, with your experience in the railroad business, that you will agree with me that that will be true.

My remedy is along the line Mr. Thorne stated. We have discussed this subject to see if we could not find some method that would carry out the purpose that is said to be the purpose of this bill, and I suppose they should retain the incentive; and the only way I can see out of it is to make the guarantee cover the fixed charges and the dividends on the dividend-paying railroads. I have not gone far enough into it to say what might be done with respect to the non-dividend paying roads, but certainly the fundamental principle is there to start with that you are not under the law required to go further than paying for the use of a road the reasonable

return, or rather the compensatory damages for the injury done, and then you can find that out from as many different sources of evidence as you please.

Senator KELLOGG. I do not believe I understand. You say make the guarantee the amount of the dividends?

Mr. COWAN. Make the guarantee the interest and fixed charges and the customary dividends that are paid by the dividend-paying roads.

Senator KELLOGG. What will become of the balance of the income?

Mr. COWAN. I was just going to say.

Senator KELLOGG. I beg your pardon.

Mr. COWAN. Take the 10-year period. I think the 10-year period ought to be used for reasons I can give if I have time. It will make about \$500 difference a mile in the case of the Santa Fe and the Burlington if it was put on that average rather than the last three years. It will not make that much difference on all roads. Our Texas roads will all get a great deal more on the last three years, treating them as separate corporations. But the surplus that is above that—that is above the interest, fixed charges, and dividends, which Mr. Thompson read the exact figures of the other day, and it is in the record, 10 and 15 per cent oftentimes—if my recollection serves me right, most of the roads have, until the Milwaukee undertook its extensions across the Pacific, most of these western lines out of Chicago ran from 5 to 10 per cent above the interest and fixed charges, with the exception of the Great Western and possibly some other exceptions, but for that surplus, as far as the necessities of the Director General in his administration would permit, be all paid back to the roads that earned it.

I had thought that 75 per cent of the surplus could be paid to the roads, or allowed to retain it, so they will get their interest, dividends, and 75 per cent of the surplus, leaving the other 25 per cent to help out the weaker lines to use for the purpose of calamities like the Ohio floods, for example, and like the floods we are going to have in the Mississippi River in a month or two beyond anything we have ever had before, and like the Galveston storm, and things of that character, and to help out the weaker lines.

That would leave each railroad with its organization of employees and operatives, with the same incentive that they have now, from the president right down, to do the best they could with their property and secure for the Government and the people a much better service than they otherwise could get, in my opinion.

Senator KELLOGG. Do you think the organization in a railroad is of great importance?

Mr. COWAN. I certainly do. It is a family. It is teamwork. It is like a baseball team. You destroy and take away the organization of a large system of railroads or seriously cripple it and you cripple that road.

Senator KELLOGG. Suppose Mr. McAdoo does not agree to that, and he says: "I am going to wipe out these organizations and put in my own organization of politicians and appointees."

Mr. COWAN. He had better get a market for scrap if he does that.

Senator KELLOGG. Then there would not be any surplus to pay over to the railroads, do you think?

Mr. COWAN. No, sir.

Senator KELLOGG. Have we a right to do that, do you think?

Mr. COWAN. No, sir; it would ruin the commerce of this country in any such fashion.

Senator KELLOGG. He could do it under this plan.

Mr. COWAN. Well, of course, he would not do that.

Senator KELLOGG. I do not know whether he will or not.

Mr. COWAN. That is not the thing. It is not necessary for him to have the opportunity or any man to have the opportunity. There is no necessity of even such a proposition. I can not understand how it was conceived.

Senator KELLOGG. How are we going to avoid it under this taking, if he has the absolute control and operation of these roads?

Mr. COWAN. You mean doing without the use of the organizations?

Senator KELLOGG. Yes; he can wipe out their organization. How are we going to stop it?

Mr. COWAN. You can not, that I know of. I have not much fear of that.

Senator KELLOGG. I have.

Mr. COWAN. What I am afraid of is that in time of war when we need to turn every wheel to the fullest limit, when we need to get the greatest efficiency out of the labor everywhere, when we need to produce the most, to transport it the cheapest, to minimize expenses between the producer and the consumer, we invite poor service of the individuals performing this work, it is marvelous to me that we would do it.

Senator TOWNSEND. Does your plan make provision for the upkeep of the road?

Mr. COWAN. Oh, yes; the operating expenses contains the upkeep of the road.

Senator TOWNSEND. What is to be the standard with the upkeep, in view of the operating expenses?

Mr. COWAN. An examination of the accounting system of the Interstate Commerce Commission, which was worked out between the commission and all of the auditors of the railroads, their engineers, general managers, and men in charge of operation and construction, if followed, amply takes care in the operating expenses of the railroad and its equipment, buildings, and everything there is pertaining to it.

In further answer to your question, let me pause a moment to say that in the hearings of the Shreveport case and in the hearings before the Texas commission in the proposal of the railroads to advance the Texas State rates, the subject came up with respect to the matter of depreciation and the maintenance and was gone into in the greatest detail by experts and others—I will say “others,” because they professed to be experts—but it was shown there that at a certain period the Santa Fe Railroad owned so many cars and so many locomotives, with an affidavit filed with the Texas commission as to what they cost the Santa Fe Railroad. In the valuation of the property, taking the same locomotives by numbers and these same cars by numbers, putting in a valuation they made it much higher than the affidavit showed they cost them.

The men in charge of the shops, machinery, and tools, supervisor of construction at the machine shops, and others, that they brought there

to show gave in detail the manner in which they kept up the locomotives and the cars, and they showed that there was a rebuilding and reconstruction process that was sufficient to account for it, and that the locomotives and cars were, in fact, worth more money than they were before, on the ground that they were very much more serviceable, and they had one locomotive in use on the Santa Fe which they had there since the road was built in the State of Texas beginning away back there in 1880. The Southern Pacific has one in its shop in Houston that they had there during the Civil War, as a hostler carrying cars about the yards in Houston, that they had there during the Civil War, and their theory is that there is no such thing as wear-out to a car or locomotive provided you see fit to keep it up; that obsolescence is the main thing, on account of the condition of traffic and one thing and another they throw it away or scrap it rather than keep it up; but the depreciation in the expense account of the commission keeps up the equipment and the replacements completely.

Of course, it takes new capital to get new cars; but in the surplus there is ample capital for that with most of the roads.

In cases of great calamity, like one period when the Canadian River washed out every bridge clear down to Fort Smith, there was great loss. That, of course, should be distributed over a period of years. Such a calamity as that should not be written out in operating expenses in one year. If they will just pursue the system the commission has for its accounts, it will amply take care of the property, and the question of depreciation and the question of maintenance need not come in at all, because it will be taken out in the operating expenses.

There is one clause in this bill in that connection that I wish to call your attention to, and that is "shall be adequately maintained as may be directed by the President." It is perfectly absurd to abandon this great system of accounts and take away the standard of comparison, one year with another. No business man would think of such a thing as that. How will we compare what we do when we operate these railroads for the Government with data on which the railroads operated them? Then, we have the sum total of the best judgment in the country on these questions, and the scheme is liberal to the railroads, and as liberal as it ought to be.

Senator GORE. You think the best judgment ought to count for something?

Mr. COWAN. I certainly do; and it will in the end, of course. We always come back to life if we get to flying too high.

I think the plan I have suggested certainly does merit consideration. The question whether the Director General will operate the railroad companies as a corporation, or operate the railroad direct, you will find in the end is going to become a very important question from many viewpoints.

If he simply directs the operation of the railroad by the common-carrier corporation, then the act to regulate commerce applies unless there is something in the law to the contrary. If he operates direct and not through the common-carrier corporation that is so much waste paper, because the first section of the act provides, as I know Senator Kellogg is familiar, and I think every one of you here, "that the provisions of this act shall apply to any corporation or any person engaged in the transportation of"—and starts in with oil and

oes on "by rail and water," and so on, so that unless you put in this bill a provision that the act to regulate commerce shall apply to the transportation as operated by the Government, then there are no rights or remedies in the law for any shipper or anybody else. It is a government without law in that case; no standards of right or wrong.

Senator KELLOGG. Is it not evident from the proclamation and from Mr. McAdoo's statement before the committee that he claims the right to operate the railroads without regard to any law whatever?

Mr. COWAN. I was amazed at his statement, if I correctly understood it the other day before this committee, and I thought I did not correctly understand it, probably, just because of the remarkable proposition.

Senator KELLOGG. I do not think you misunderstood it.

Mr. COWAN. At all events the shippers of this country and the people of this country will never submit to any such a proposition going in the law, and the first opportunity they have to voice their sentiment, 99 per cent of the people in this country would go against that. We have got to reckon with the rights of ordinary men as defined after years of experience and work, and the hard struggle between the people on the one hand the railroads on the other to define the rights and liabilities, and provide the best remedies we thought we could provide—to wipe them out and say they shall not have them, and have another standard, I would suppose that nobody would for a moment consider urging such a proposition.

Senator CUMMINS. I might remark, the way it has impressed me is that this bill goes upon the theory that nobody has any right in time of war except the railroads. They have a right to compensation, just compensation, and that is provided for. Nobody complains of that, but nobody else has any rights whatever.

Mr. COWAN. That is, they get all the eggs. Now, we started in this matter of fighting against the proposed advances in rates, and we convinced the Interstate Commerce Commission against the idea, contrary to the apparent public sentiment, that the railroads were being badly treated. But, so plain was the evidence presented to the commission, being inclined favorably to the railroads as the Interstate Commerce Commission was, that they could not see their way clear to grant any advance at all except in the merchandise rates in the eastern territory. No sooner had they given out their opinion than the railroad presidents began, one after the other, to write letters to the newspapers, and the newspapers published nothing that anybody else said, and bankers in New York and elsewhere wrote out to their correspondents in the various localities telling the people in what a terrible condition the railroads were, and again starting the clamor to do something for the railroads.

The commission said: "We will leave this open now, but keep close watch on their monthly reports, and should it appear that the fears they manifested here are probable, or imminent, we will modify our decision and hold it open for that purpose."

By the 15th of August, just about the time you passed the law here that prohibited the filing of any advance tariffs unless they were approved by the commission, they rushed in a cartload, or several cartloads, of tariffs to advance the rates all over the country.

There were so many of them that they did not even know themselves what they had filed. The attorneys did not know what they had filed, and the commission did not know what they had filed. They had not had time to assort them. They were proposing to complete the job and advance these rates on certain commodities, live stock in particular, and fresh meat, and we appeared here in August to argue again before the suspension board, and it was suspended, and then they filed a general blanket application before the commission to be permitted to advance these rates, crying aloud that they were ruined and that their monthly reports would show it. Of course the monthly reports would show it. You might just as well turn a negro loose in the watermelon patch and tell him not to take one, as to expect these monthly reports to make a showing of the condition other than that they were worse off than they were before.

Mr. Kellogg, being somewhat familiar with these monthly reports, knows it depends upon the policy of the railroad about how much will be apportioned out. Some railroads apportion so much to be actually done per month in the way of re-laying track, and one thing and another. It may be postponed, it may be minimized in various ways, and the amount may fluctuate a very great deal in the operating expenses or the items of damage. For instance, the Santa Fe Railroad set out some tank cars that had hauled gasoline at Ardmore—I believe that is correct—and some fellows came along working on the tanks to fix them up, and an explosion took place which almost destroyed the town, and it cost the Santa Fe Railroad \$1,000,000. They just simply went on and paid it.

I do not know, but I was told that it was the duty of the oil company to repair these cars, and I was asked to have inquiry made by the Interstate Commerce Commission and an investigation as to whether or not the Santa Fe Railroad actually was out the money, or whether the oil company was out. I do not know anything about the case except I was requested to make inquiry and if they would find out about that. The man who told me about that thought that they would find out that the oil company was really the one responsible. I do not know.

During the same year they had a great flood at Galveston—destroyed the causeway, and there was great destruction. If it had not been for the sea wall it would have destroyed the city.

So, these calamities may come along and monthly reports may show almost anything. The man who directs the entries may make them as he pleases. They may settle up balances or not; joint facilities are used everywhere nearly, and the storekeepers' accounts may show almost any sort of thing. I do not mean to say fraudulently, but it may be shifted from month to month so that these monthly reports I do not think amount to very much.

That is one of the reasons I wanted this three-year period brought down to cover the calendar year, which is the official year of 1917, because they will have gotten some of their own dope then mixed in with the amount that is estimated for the operating expenses.

I want to call your attention to that, that it may be well to say. "Why did they stop with the so-called fiscal year of June 30, 1917, when there is no such fiscal year in the accounting?" They simply have to accumulate months and add to the fiscal year six months in

ler to call that a fiscal year. The fiscal year is the calendar year now.

Senator KELLOGG. One trouble is, Judge, they say, I think, the Interstate Commerce Commission, that the accounts are not available yet, and will not be for a month or two.

Mr. COWAN. No; it will be about the middle of February before they are available to the commission, but inasmuch as we do not have to pay it right now, and the guaranty is the basis of ascertainment, and it is to be paid quarterly, I do not think that is much of a sound objection. The objection lies in the fact that if you do include the six months where these accounts do not show as well as they might otherwise have shown, it will cut down their guaranty, and that is the reason for using the fiscal year, so-called; up to June, 1917.

We used that in the Fifteen Per Cent Rehearing case here to show that that was the best year they ever had. They said, "Oh, yes, but it is not a fiscal year."

Senator GORE. When was this hearing?

Mr. COWAN. Before the Interstate Commerce Commission in November, beginning the 5th of November. The western lines filed application for advance in rates, and when the Interstate Commerce Commission made its recommendation to Congress in regard to the reduction of the railroads and called for your investigation about it, it was the genesis of this bill that we have before us. The western lines wrote a letter to the commission withdrawing their application for similar advance on the ground that they wanted to get the annual figures for 1917. That is in a letter on file with the commission. So they wanted 1917.

Senator GORE. The fiscal year?

Mr. COWAN. No. They wanted 1917, fiscal and calendar. That is what they said they wanted to do. I think if the guarantee is based upon a three-year estimate, supposing the plan which I have suggested with regard to the matter of surplus should be the plan, and you took the three average, you should bring it down to date and use that as simply a matter of evidence as to how much they probably would be damaged by not being permitted to go ahead and operate the railroads and get the net money out of the business under present and as near present conditions as you can find. So I think it ought to be the case.

Now, as to the matter of making the rates.

Senator GORE. Do you say you think the calendar year 1917 ought to be the basis?

Mr. COWAN. No; if we are going to have three years, let the three years end the 31st of December. You can not get at the exact figures now, but they will be available within 30 days.

Senator GORE. The three last calendar years?

Mr. COWAN. Yes, sir. But I think 10 years ought to be taken and have suggested 10 years, 1908 to 1917, when the accounts of the commission and all the railroads were kept under one standard. It ran on all the lines and embraced the fiscal year ending June 30, 1908. Taking 1908 to 1917, inclusive, you have 10 years, and inasmuch as many of these expenses and improvements are of the character, when they go into operating expenses, like repairs to these

bridges and the like that I spoke of on the Canadian River, and in Ohio, and so on, it ought to be extended over a period of time and it would be better to take 10 years and get more nearly what the earning power of the road was than you would to take the three last past, embracing these abnormal times.

Senator KELLOGG. I suppose you would have to make some allowance for the difference in property earning the money as you take lump sums, so many million dollars for each year, 1908, 1909, and 1910, and dividing it up by 10 you would have to make some allowance for the additional property earning the money.

Mr. COWAN. I neglected to say that the figures I made out I took on that basis of reducing it each time to the single-track mileage earning per mile of line.

Senator KELLOGG. Oh, yes.

Mr. COWAN. That gets at a unit. Yes, I saw that difficulty and that would still be advantageous to the railroads. It would be liberal to them because the extensions that have been made for the most part, at least, have been extensions in the western territory where they have not generally been so extensive, so valuable as the balance of the line.

Senator GORE. State your standard again.

Mr. COWAN. Take 10 years, 1908 to 1917, ascertain the earnings on the basis of single-track miles and then average of net revenue from operation. Then you can deduct taxes if you want to or not, if you please. If you deduct the taxes, then it would be the income from operation. One is net revenue and the other is income from operation, guaranteeing out of that income that presumably the Government is going to make on its operation a sum of money that would pay the interest on the interest-bearing obligations and the fixed charges, taxes, and the customary dividend of a dividend-paying railroad—that is, guaranteed—no further guarantee than that they shall each have of the surplus produced by each, I think, 75 per cent will work out all right. You ought to be very liberal to the railroads in this emergency. It may be 66⅔ per cent; I do not think it would come below that; I think 33⅓ per cent of the surplus ought to be sufficient if we have an efficient operation, as we have had heretofore, because these figures that I have named for the 10 years contain within them a surplus that is ample enough to meet all of the requirements that would have to be met, and if we can keep that up for the next two years, why, that would furnish a sufficient surplus.

Senator CUMMINS. In considering that plan have you taken into account the possibility that under Government operation or direction some of these roads will be used a good deal more than they have been in the past, and some of them a good deal less?

Mr. COWAN. I have taken it into consideration in thinking—of course a man can only think according to his experience and observation, and from the general rule, I will say, that he is acquainted with. There will not be that diversion of traffic that is so generally spoken of as being of great advantage. The diversion of traffic will generally be a disadvantage. The shipper knows about how to route his freight best; he knows the way to roost like a chicken, and he knows it better than anybody else does, and he has sought the lines of least resistance in moving his traffic to suit his trade from the point of origin to the place where he is to deliver.

Senator CUMMINS. That would mean you would take away from the Director General the power he is now exercising of routing traffic?

Mr. COWAN. No; I would not do that, but he will find, if he has the roads operated efficiently and properly, that he would better take the judgment of these men in the business of shipping this stuff than to get somebody else's judgment here in Washington.

Senator KELLOGG. It is not the custom here always to take the judgment of somebody who knows the business?

Mr. COWAN. I have heard some remarks about that, but surely if this business is carried on in the manner in which commercial business ought to be the routing will not be very much changed for ordinary commercial traffic. The routing that will be changed will be this: To relieve the congestion at ports, and as soon as the Government takes hold, if they do their duty or, rather, if they do what ought to be done, as was expressed before the House committee by Judge Prouty yesterday, construct warehouses, plenty of warehouses, where you can unload this stuff, and plenty of side tracks on which you can handle it for that purpose, you will have relieved that situation.

Another point, lest I overlook it, I must mention, and I mentioned it to Mr. Payne yesterday and to Mr. Anderson, and that is this: Never make a guarantee that extends over any considerable period of time, because you gentlemen have lived long enough to see some very bad financial panics. You have seen the time when the railroad traffic in tonnage was not half as much as it is to-day. You will see that time again if all the building trades of this country stop, as is proposed, except in that territory where munitions are produced and moved. A great drought prevails over this western country from the Missouri River to the Rocky Mountains, except where the snow has recently fallen. Prospects for crops in the Southwest are the worst I ever knew. The grain crop is going to be a minimum in that country. The wheat in north Texas, for example, and I am sure it must be so in Oklahoma, is practically frozen out, and there will be no wheat crop.

Senator GORE. It did not come up.

Mr. COWAN. I have had a telegram since I came here saying that I had lost 300 acres of wheat that was frozen out. It did not come up in Kansas, I have been told by a number of men there, and did not in Oklahoma, except just partially, so that the amount of traffic to be handled in this country may fall off tremendously to some railroads.

Of course, it will remain for carrying coal, war munitions, and the like, as much as they can carry, but I would say that you ought not to make a contract on any long terms of guarantee, no matter what plan you follow; on a guarantee it ought not to extend over two years, not longer than that, because if you do you create a vested interest in these railroads, you accomplish that which would have been impossible under any law fixing rates, and when traffic drops down, say 50 per cent in commercial traffic, 30 or 35 per cent, even, labor is out of employment, disturbing conditions in the country, and you can not make any money out of a railroad or anything else. Panic is on a country and may even come in time of war, while yet the Government has contracted with these gentlemen in New

York that own and control these railroads and speculate in these securities, and shall we say to them, "We will maintain your securities at all hazards, although the little lines may go to demnution"?

Senator GORE. They will be the only people who will have a snug harbor?

Mr. COWAN. Yes; they will have a cinch. It will be like one of these farms I bought. I bought a graveyard without knowing it. I have got a home for the future in spite of anybody.

Now, I wish to appeal to this committee, as I did to the committee of the House, not for a moment to let it enter your minds to enter into a contract that has not a time limit of the period this guaranty shall run, and let it be readjusted according to the conditions as they shall turn out to be, as is frequently the case in the rental of land, town lots, and the like, in large cities for the construction of buildings. And there certainly could be no objection to that if some plan could be drawn to do it, and it can be drawn.

Now, as to the little lines. It is my observation that under the Constitution if I have a little line of railroad connecting two trunk lines, over which I am able to get a good deal of traffic, I am making some money out of it, like the Abilene Northern, for example, between Ballinger and Abilene, Tex., connecting the Santa Fe and the Texas & Pacific, and at the northern end it connects with the Fort Worth & Denver City part of the Colorado Southern, and operates so as to make money. They get some traffic and make money out of that little line. They would not route any freight over the line; they would not permit me to procure routing of any freight over it; but if they would not let me do just the mere amount of local traffic that has to go on the line, and I have got to starve to death by reason of what the Government has done, alongside of me, at my connections at both ends of me, I will say, I will be in exactly the same condition I would be if you exercised as a corporation the right of eminent domain to construct a railroad along my property and destroy the value for the use to which I can put my property, and you damage me so much money. You owe the one just as much as you do the other, so far as I can see.

But, passing the obligation, these little lines are the lines that are developing the country. They are the only railroads that are being built in this country for development. I have in mind an instance like this. The people of Midland, Tex., although their crops were all destroyed by the drought, raised money out of their own pockets to build 65 miles of railroad to a county seat northwest. The Santa Fe at the same time projected a line down to the same place from the north to the southwest. The Santa Fe will be taken over and operated. What will become of this line connecting the Texas & Pacific from Midland up to Seminole if the Government will not have anything to do with them? It would be the Government's duty, of course, to move the traffic over the line that it controls and has under operation, and it would afford a better service than the little line could. The Santa Fe has got a branch there on which it gets all the traffic, whereas the little line from Midland to Seminole does without any, and the Texas & Pacific, which connects at Midland with this little line, could not get any of the through traffic to haul to route over that line.

I say the thing to do is this in regard to those short lines: Let the Government, it looks to me, if they took over anything, take over those little lines as well as any other. The same language is applicable to them as far as I can read it, but they put a different construction on it. When the bill was drawn I do not know whether they had that notion or not. Let the Government do what was said to be the foundation for this; that is, the Government was going to assemble—aggregate the entire transportation system of the country to the end of utilizing the resources of this country, which had been committed to the Government for the purposes of the war, and utilizing all of the facilities to transport those resources as might be needed, and aiding the development of these things which, on every hand, would be absolutely necessary; take over the little lines, then put all of it into a transportation system. Surely Congress must have meant that when it passed the law in 1916. If it meant anything, it meant that, it seems to me. I never dreamed of it being otherwise.

And then pay the incidental line what the use of it is reasonably worth. That is the standard; that is as much as it is entitled to. But when it comes to operation, let the Texas & Pacific, for example, operate that little line from Midland up to Seminole. That does away with the organization of the little line, it is true; it is simply operated as a branch line. In exactly the same manner the Santa Fe branch line is operated from its connection, and the same distance down to the same place.

I am sure you will find that can be done so that the branch lines will not be operated as separate lines; they will simply be operated by the trunk-line connections, one or the other, as might be directed, and the payment would be made to the owners of the short line for a reasonable rental under the circumstances, judging it from the way we have always determined what is the reasonable rental for the use of property, and pay them that money, and if they were useful enough to make that all right; if they were not, we would have to make it up by taking from the surplus fund which I have mentioned that came from the big roads.

Now, it looks to me that that simplifies that proposition. But if you stop here and say that there shall be no other short lines built in this country, we stop the development of the country, and I am surprised, gentlemen, that anybody acquainted with this broad land of ours, where so many railroads are needed to develop the growing western country, would say that, and I do not think, if they think about it correctly, they would say it.

What I have said I wish to be understood as not criticizing these gentlemen. I am talking about the ideas that have been presented and not about the men. I am talking about the results which would flow from the plan of the bill and not in opposition to the enactment of a suitable and proper method which will better accomplish the end and in a better way, in my opinion, than to undertake the risky and dangerous experiment which would result from the terms and provisions of this bill.

As to the rate-making power, as a matter of course it ought to rest with the Interstate Commerce Commission and with the State commissions on all commercial business.

Senator GORE. Do you not think there are two plans which might have been pursued, one to take over all railroads, including small lines, as you suggest, or else just select out a few of the trunk lines, the big arteries, principally those in the eastern division of official classification?

Mr. COWAN. Oh, well, I think it might have been done, Senator, in many different ways. I am not attempting to criticize the manner in which it has been done, or to say I would have done it differently. I probably would not have been capable of doing it. I certainly would have taken a great deal of advice before I attempted it.

Senator GORE. I was wondering if there was any necessity of taking over the lines of the western system?

Mr. COWAN. Well, from some viewpoints it might be necessary. If the war is going to last 10 years, I should say yes. If it is only going to last a year or two I would say no, that there was no use of taking them over, but if it is going to last so long a time and all the resources of this country are in fact commandeered, we have got to commandeer the west, and we do not know what will happen. The Pacific coast may be assaulted. We do not know but that Japan may come there and bombard San Francisco at any time; they could do it, and how to prevent it I do not know. It would be like the Irishman was who stood out on the bridge at Niagara Falls. Another fellow came along soliloquizing over the wonders of it. He said, "Is it not wonderful to see that water pouring over the falls like that?" speaking to himself, but the Irishman overheard him and he replied, "Well, what is there to prevent it?" So that is about the situation we would be in if somebody wanted to start a war on us on the Pacific coast, and I do not know how we could prevent it. So maybe if we are going to have a long war it will be necessary to take over all the roads.

In regard to the matter of making use of this for the purposes of Government-ownership propaganda, I think it was a misfortune that it was injected into the situation. Why we can not undertake Government ownership of railroads in this country with less consideration than we would a constitutional convention. It is the most momentous thing to future generations of this country. The idea that you can just jump in and take the railroads and have Government ownership, of course, is preposterous to men who have thought about this subject, and it is no time or place, in my opinion, to give it even the consideration that this would be made use of for the purpose of the bill prepared with that end in view, and I do not suppose it is.

But the main result, of course, in our judgment, is a different thing. It may result that we do have Government ownership in the end, but if we here, in this instance, should pursue the plan of the bill with regard to the guaranty, and release every railroad operative in this country to go off to the picture show and to attend a baseball game when he ought to be looking after his transportation on his road, and leaving the water tanks to freeze up on the road just because he does not want to go out in the cold, and the engine stops and dies, and all that, as would be the case, the people will not like that very much and will not want Government ownership. And if the men around the station and those in charge of trains shall cease to feel that they owe an obligation to the traveling public and to others to accommo-

date them and treat you like the help does around the hotels in Washington, you would not want any Government ownership.

Senator GORE. They just tolerate you?

Mr. COWAN. They talk about stopping travel. That is the best way I know of to stop it, is to take away the incentive of the operative to be courteous.

Senator KELLOGG. That is taken away very largely in Government ownership, is it not?

Mr. COWAN. I do not know, Senator Kellogg. I am afraid it is, and I am afraid the weight of popular sentiment for Government ownership, that when these roads are taken over they will never be turned back. Now, this thing will get into politics. There is enough in politics now to stagger an ordinary man, and female suffrage and prohibition will be nothing compared with this. So I think the idea with respect to Government ownership should be eliminated.

Senator KELLOGG. You think we should make a definite period at which this is to end?

Mr. COWAN. Well, I think it ought to end in a definite period, but I do not know whether you can make it, Senator.

Senator KELLOGG. I mean after the war?

Mr. COWAN. I have heard the arguments back and forth about that, and at first my thought was to fix a very short time, risking it that if it could not be done within that time then Congress would of course change the time.

Senator ROBINSON. If you were going to fix a short time, why require that it be for the period of the war; if it is desirable to leave as much latitude as possible, why not leave it where we can unload it immediately if we want to?

Mr. COWAN. Possibly you misunderstood me, Senator. I said I first thought we ought to fix a very short time. I have been giving the matter consideration and I have heard the arguments back and forth, what would be the probable matters to be faced when that time comes. If this guaranty is continued the railroads will remain in the hands of the Government until there is a mighty good prospect of making more money than that. They will be put in the position—if any of you gentlemen ever traveled around and had observed and been shown around the towns of the West in the days when it was the frontier, I suppose you never engaged, of course, in the pastime, but the man who kept the game, had the check rack and the kitty and got the split and took the percentage off of the game still remained in the business, and that is what this bill would give to the gentlemen who are running the game in New York.

Senator CUMMINGS. It would give them the advantage of the split.

Senator GORE. Men may come and men may go.

Mr. COWAN. Yes; but we go on forever.

Senator KELLOGG. I judge, from what you say, that you think the railroads ought to be left, so far as the operation is concerned, to the corporations and their organizations as they are now, subject to Government direction?

Mr. COWAN. That is my candid opinion. I think I know that ought to be done.

Senator CUMMINGS. How are we going to do that unless we take possession out of the Government director and leave it in the corporation and leave him authority simply to direct?

Mr. COWAN. Well, what is possession of a railroad? I do not know.

Senator CUMMINS. The Director General claims the right to discharge any employee, to wipe out the organization, to fix rates, wages, etc.; to do anything.

Mr. COWAN. Possession of a railroad, I should say, is a good deal like the possession of the land within the meaning of the statute of limitations. Physical possession, of course, in the sense in which I might possess a watch or a thing like that is not parallel, and if the law directs it has possession, why, that would constitute possession for all purposes, and I do not know but that possession power—I think you are correct about that, and I see no reason why it can not be as effectively devoted to the uses that the Government may need in any of the most strenuous times of war by that means, because every man can be commandeered and made to do what the Government tells him to do; and he can tell a railroad general manager to do a certain thing here, and if he does not do it put him in the guard-house, and he would be dead certain to do it, if he did not have patriotism enough to do it anyway; but they are all patriotic men, and I believe every man I know of the railroad managers and operators would gladly obey the patriotic duty, the command of the Director General, and do it in a better way than any other person you could select to do it. That is my opinion.

Senator CUMMINS. Without expressing any opinion as to which is the best way, what do you think about this application of the law? If every conductor, brakeman, engineer, and superintendent felt that they were working for the Government and not for the corporation, do you think then they would get the trains over the road and move the traffic?

Mr. COWAN. Do you mean in how long?

Senator CUMMINS. Working as long as the Government wants to hire them.

Mr. COWAN. No; get the trains over in how long?

Senator CUMMINS. You have said that they would not get the trains over the road; that they would loaf on the job. And one can easily see how you reach that conclusion; but I assume that is because these employees would regard their employment as the employment by the railroad company?

Mr. COWAN. Yes; they expect the road to be turned back and they will continue in their work.

Senator CUMMINS. But suppose they all regarded the Government as their employer—that they were paid by the Government?

Mr. COWAN. I have no way to draw any conclusion from that, just estimating the man power and the human disposition, except that wherever I have been in contact with Government employees and representatives they have not manifested that they were in much of a hurry about it.

Senator CUMMINS. That is, you mean men do not work as hard for the Government as they do for private employers?

Mr. COWAN. Not if he knows it; in my opinion.

Senator CUMMINS. Not if he knows what?

Mr. COWAN. I think that is the universal experience, gentlemen.

Senator CUMMINS. Is that the reason you think the Government can not successfully run the roads, or is it because you think the employee does not know who he is working for?

Mr. COWAN. I think both of those things come in; but I think another very important feature as to whether the one plan or the other should be adopted, and that is this: The reorganization of the railroad family that was mentioned by Judge Kellogg a while ago.

Let me read you a letter which was written to Mr. McAdoo, by Mr. John K. Rosson. Mr. Rosson was formerly live-stock agent the Missouri, Kansas & Texas Railroad and is now in the commission business. This letter was written to Secretary McAdoo by Mr. Rosson, as follows:

I spent the day yesterday in Texarkana, and a large part of the time in the hotel, and I overheard a conversation between railroad employees with reference to the treatment they were getting from the Cotton Belt Railroad. From the conversation I understood that their headquarters were at Pine Bluff, where their families lived, and that, beginning with last Thursday, January 10, seven crews had been run out of Pine Bluff south to Texarkana and none sent back, and yesterday morning there was another crew deadheaded from Pine Bluff to Texarkana. I am writing you to give this information, as they were advancing the theory that the railroad company, as well as other companies, were doing this to cause dissatisfaction and defeat the Government action in taking over the railroads. They further stated that the yards there in Texarkana were congested with freight; that there were seven engines and crews laying idle that length of time. Of course, part of them were only there from Sunday until Monday afternoon, which was the time I overheard this conversation. But in that time not one of them had been sent out. I heard them further state that engines were badly overloaded with tonnage and that they were unable to make any kind of time; that 8 miles out from division headquarters they were tied up on account of the 16-hour law, laid there five hours before a crew came after them to pull them in, and it appears that another train got within less than one-half a mile of division headquarters, tied up on the main line, which required a crew to come out, and then I heard them say that each man of the crew that came after them got 100 miles pay for this service, further indicating that this was making a bad showing in the expense account of the Government.

I have no doubt that is absolutely true, because this gentleman is as honorable a man as there is in the country, and an experienced railroad man for 25 or 30 years, and it only indicates what could be expected in the outset and beginning of Government operation unless they compel these railroad companies to perform their duty.

If we were going to take over the railroads permanently, these men would all have a motive to hold their jobs with the Government; but believing, as they probably do, that it would only be a couple of years or a year, maybe, they have not got the incentive. It upsets the whole thing, it seems to me. It would leave it in a chaotic condition. That term is the one generally used in such cases, and I believe the incentive ought to be left there, and I believe the operation of each system of railroads, for the present at least, until circumstances show it is better to make another plan, would be the better plan. That would leave, then, each railroad property responsible for what it did to the public, it would be responsible for the damages it caused to people and to property, and it would still retain the same interest in serving the community that it serves that it had before, and I believe that would be better. But that is not, perhaps, anything to be considered as a part of this bill. I have only answered because you asked me the question, but still you ought not to make one pot out of all of the funds and then divide it up among the railroads and leave nobody with an incentive to perform this service which they are supposed now to perform and which they ought to perform.

I do not believe Mr. Anderson or Mr. Payne either one would object to going over this matter and giving it thorough consideration and seeing if a plan can not be devised that will retain this man power. I assume that these gentlemen are all as patriotic as any of us are, and they are endeavoring to do the best they can. I am sure that is true. I have no doubt that is the case with Mr. McAdoo; but a man may be around where his advice comes from only a comparatively small compass, and he may get an idea that he is wrong on this subject, and it seems to me, therefore, that there is danger that the Director General may consider, honestly, no doubt, perfectly so, that it is to the best interests of the country to maintain, or in other words somewhat to underwrite the railroad securities of the country. That I do not think ought to be attempted, but I think everything that can reasonably be done to maintain the best credit ought to be done, but I do not think the shipper we represent ought to be taxed with an unreasonable rate to accomplish that purpose.

Taking the short-line difficulties and comparing them with the objects sought with respect to the guarantee as a means of maintaining railroad credit, two propositions were adverted to by Mr. McAdoo. One was in answer to the objection that the short lines would be injured by not taking them over. He said we could not expect to escape injury in time of war, that we did not expect or want to send cripples to war, and we did not want to take a cripple over.

That is as I understood his testimony, that if they suffered some injury it was a thing to be expected, a thing all of us had to do—I suppose he meant all of us would have to assume more or less burdens during the war. But if the railroad credit of the big roads that they do take over is to be maintained by levying additional rates of freight on the producer from the farms and the ranches of this country, I object to putting them in one class and the smaller roads in the other one. I think we all ought to go along together and take our burdens and bear them together, shoulder to shoulder, and I believe this bill ought to be constructed on lines that will accomplish that object. If we agree on the objects of the bill certainly we could prepare a bill that would carry out those objects. The difficulty is in agreeing on the objects.

I wish to thank the committee for its courtesy in extending me this much time, and I wish to file with the committee a prepared typewritten statement that I will call my written brief of argument and statement with respect to the matters which I have discussed somewhat in a haphazard way before the committee orally:

The CHAIRMAN. It will be printed.

(The statement referred to is here printed in full, as follows:)

Gentlemen of the committee, in addressing myself to the Sims bill (H. R. 8172) it is no part of my object to oppose the bill, but to add, if I may, in a proper consideration of the objects to be attained and the provisions of law to be enacted to accomplish the best results and protect the shippers in their fundamental right to just, fair, and reasonable rates to be determined by the tribunal best qualified and equipped to do that. I represent in particular the entire organized live-stock shipping interests in the live-stock producing country of the Central West and East, and what I shall say is entirely consistent with the history of their connection with railroad rates and service vital to the business as the business is to winning the war.

In considering the bill it is necessary to constantly bear in mind the objects of it. If that can be determined and agreed upon by the committee; if the committee will inform itself with regard to the facts, complex as they are, so

as to judge of the consequences of what it does, it should not be difficult to find language with which to express and carry out the purposes and avoid the injuries which might result without such consideration. It will be my purpose, therefore, to point out as nearly as I may—and, as I said before, I am in entire sympathy with legislation for Government operation—such matters as I trust will be of aid to the committee. What I shall say likewise is as much addressed to those who framed the bill and are the particular proponents of it, believing as I do that they will welcome any suggestion which will lead to the best results for the public interest and equitable and fair treatment to the railway corporations and the individuals most directly interested.

The first public announcement which led to the proclamation of the President, the appointment of the Director General, and the action now proposed in the bill was the report of the Interstate Commerce Commission to Congress growing out of the hearing of the Fifteen Per Cent case, *ex parte* 57, upon the application of the railroads in the eastern district of the United States for further advances of rates applicable to that territory, which report of the commission was in turn upon the knowledge which it had and the statements of the railroad presidents and others made before the commission in that case.

It would scarcely be proper to here point out in detail what was said, but it is sufficient to point to the fact that it was asserted by the eastern carriers that the burdens of the war had so congested the traffic owing to its volume and owing to the difficulty of handling in the terminals and ports, much of which was undoubtedly due to the inability of the Government and others to secure shipping to the Atlantic ports. Although the railroads had the maximum of traffic and more than they could handle they could not efficiently operate their properties because of insufficient power, the number of cars and the manner in which they were used and held, and insufficient trackage, coupled with the difficulties and inability to secure labor and partly to the loss of skilled labor going into the Government employ and into industrial work, coupled with inefficiency of labor.

The situation, therefore, was not so much that the specific rates were not themselves adequate to the service as between the railroad and shipper performed under ordinary conditions, but that the burdens were cast upon the railroads by reason of the war.

Cooperation as between the carriers and the operation of them as a whole and under one systematized agency, which would efficiently use all the equipment and tracks to the best advantage and pool the interests of the railroads and consolidate their management, was discussed at the hearing, and seemingly thought to be desirable upon the part of at least some of the prominent representatives of the carriers.

Upon the part of the shipping interests represented at the hearing there was a general concurrence of opinion expressed that operation by the Government during the period of the war appeared to be necessary.

The commission arrived at that conclusion; at least, it concluded to submit the subject matter to Congress for its consideration.

Thus we have before us at this time the bill now under discussion. There is no precedent and the subject is as new to the framers of the bill as to the rest of us.

It was nowhere intimated or considered on the part of those representing the shippers that a general advance in the rates would cure the situation; it was frankly admitted by the carriers that the advances asked for would serve merely as a poultice, but not cure the wound; and generally, as I understand the matter as presented by the commission, the major premise of the entire contention was that the exigencies of the war constituted the cause of these conditions requiring a remedy that would be adequate to meet the situation; which was one advance after another would be demanded of shippers as underwriters.

The remedy that has been determined upon is governmental control, and the term and conditions of it are the subject matter of the bill.

Taken from the railroad view, we may go back into the history of railroad regulation to elucidate the present situation and bring into view the principal matters of contention which would naturally arise and which do present themselves by the terms of this bill as between the ordinary shipper on the one hand and the carrier upon the other, unmistakably disclosing the railroad's purpose to saddle the country with these increasing rates.

Previous to the enactment of the Elkins bill in 1903 rebates, discriminations, and preferences prevailed almost universally in greater or less degree. The object of that bill was to absolutely prohibit these wrongs and to punish both the carriers and the shippers, or at least to make them afraid, and this competition between the carriers to pay in some manner for the traffic—in other words, to buy it—ceased to be the rule. Previous to that time it mattered very little what the rates were on paper, at least to all large shippers whose business was of consequence, because the rates were not observed when it came to getting the money for the service. When this condition passed out then it was that a systematic method was begun all over the country to increase rates, and almost every shipper knows that with respect to his own business the carriers have in various ways from time to time succeeded and that there has been no period during which that effort has been slackened—indeed, there are no slackers among the railway people when it comes to advancing rates. Added to the skill of the railroads in that particular the superlative and unparalleled legerdemain on the banks, which own or dominate the control of the railroads for the most part, has enabled them to present such great force as to put the shipper almost out of the running when it comes to combating it.

The fact that the Interstate Commerce Commission could not make the rates rendered it practically important to afford a remedy. Rate making being a legislative power carried into effect through administrative boards and not a judicial power, the courts could afford no relief against unreasonable rates and discrimination. Therefore, beginning about the time rebates were ceasing and the advance in rates were springing up everywhere, coupled with innumerable discriminations, shippers through their individual and organized efforts sought a remedy to head off these advancing rates and to prevent discriminations, and for that purpose to establish a tribunal, or, rather, to make of the Interstate Commerce Commission a tribunal which after fully hearing the matters in controversy might, as a body peculiarly skilled in the complex and difficult problem of determining what would be just and reasonable, and correct the wrong, demanded of Congress the enactment of the law which was finally known as the Hepburn bill.

Having personal familiarity with the matter from its inception and the occasion to frequently appear before this committee and the committee of the Senate, I can not help knowing the position and contention of the railroads' opposition to the enactment of any such law and of their constant, persistent, and repeated assertions before this committee, of which its records will bear witness, of the inability or incompetency of the Interstate Commerce Commission or any other commission to prescribe just and reasonable rates, and that any such action upon the part of Congress would be destructive of property interests, of railroad development, and injurious to commerce. They emphasized with great force and brought many to bear witness that the widows and orphans, the savings banks, and eleemosynary institutions would suffer on this account.

So extensive and successful have been the educational campaigns carried on by the combined efforts of the railroads through their educational propaganda and disseminated by the multitude who still rode upon passes to Washington that this committee was so swamped with applications for hearing of witnesses, publicists, economists, professors, and others, in addition to the higher railroad officials, that it was only able to give to shippers in the beginning of the controversy a few minutes of time, whereas days were consumed by the opposition to the enactment of the proposed legislation. The whole object, of course, was to prevent interference with their levying freight rates upon the business and commerce of the country on the basis of what the traffic would bear.

The initiative in making rates—that is, the fixing of tariffs of increased rates—was left entirely in the hands of the railroads, generally acting upon most important rates through the traffic associations composed of the carriers in the various traffic districts of the United States. It can not be denied that they have worked day and night shifts in eliminating as between each other competition as to rates and publishing joint tariffs for advances with voluntary reductions only where it became necessary to favor some railroad or some traffic which would not otherwise move or to increase the volume of business so as to advance their net return, until perhaps no one would have the hardihood to contend that the entire energy of the traffic associations have had for their object greater net returns or to divert the traffic through one channel or another in order to accomplish that end for somebody. Indeed, there could

be no motive for the reduction in rates by the voluntary action of the carrier except to stimulate the business with the ultimate object of increasing their net earnings in the long run.

Since the Interstate Commerce Commission became active in the matter of the trial of these matters its offices and bureaus have been constantly flooded with an influx of railway skilled traffic men, attorneys, and others looking after the interests of the carriers.

These things are not mentioned by way of criticism; they have followed in the natural course of events and according to the rights of the carriers, but not in the interest, generally speaking, of the shipper. Constant dripping wears away the stone.

On the other hand, the acts of shippers of the country who pay the freights—and there are many who do not pass the buck—are represented to a very limited extent. Commission merchants, and traders at commercial centers, look mainly not to the amount of the rate but to the relation of the rates as compared with those paid by their competitors. Being located in a comparatively small compass of territory, accessible to each other and having the opportunity to confer, generally for trade purposes they have organizations that secure representatives to look after their interests. This is likewise the case with large manufacturers, who, although they sell f. o. b. the factory, must keep open the channels of trade, and generally speaking they have agreed upon the method whereby that is to be done, such arrangements being as is well known between the traffic men representing the manufacturers and the railway serving the respective manufacturers.

To all of this class there may be adequate representation before the commission, but that has for its object the keeping up of the parity of rates, often-times agreeing to advances in the rates as a means of preserving that parity.

I mention these things in order to lead to the point, that there is one class of people in this country who can not pass the buck and who always pay the freight, and that is the producer of livestock and farm products who must ship and sell at a central market or, if he chooses to sell at home, who must bear the cost of transportation to that central market. There is no escape from it. It may be that the miller and the wholesaler or the packer in the first instance may pay the transportation cost from the factory to the ultimate consumer or ultimate consuming district, but they are generally in a position to pass the buck along, which the ultimate producer can not do. So there are innumerable instances before the Interstate Commerce Commission and the State commissions where the miller, lumber man, packer, wholesaler, and others have been entirely agreeable to advances in rates provided their parity is maintained. They are not concerned in the amount of the advances provided their competitor ships upon the same rates. To my personal knowledge there are numbers of cases before the Interstate Commerce Commission where such shippers are treated as being advocates of advanced rates although they know that when the grain producer ships to the central grain market the total freight rate up to that point is deducted out of his accounts sales, and so it is in all cases in the shipment of livestock for immediate slaughter and generally for any other purpose.

It is no wonder, therefore, that we seen the most prominent of the communities, to wit, the large dealers and manufacturers of the raw materials and the store and supply houses not interested in the matter of advances in rates, because they do not pay them afford but little protection to the ultimate producer from whom they buy and out of whose account sales they deduct the freight, while they pass the buck to the consumer.

It may be that the finished product from the mill, from the packing house, from the elevator, storehouse, or elsewhere, in the aggregate, pays as much freight as the raw material in the form of the product of the farm and the ranch; but if both are advanced the producer pays it, whereas it does not come out of the pocket of the purchaser at the central market, while the consumer has the bag to hold from the mill and packing house to his table.

These matters are not presented thus in detail so much for the purpose of showing that the producer may be charged an unreasonable rate and can not well be organized sufficiently, situated as they are throughout the vast extent of territory, to aggregate their interest and with combined effort contest advances which may be small to each individual, but rather to show the important and overwhelming fact that whenever a rate is made beyond what is reasonable for the service performed, either for the purpose of producing to the carrier greater revenue or for purposes of maintaining its credit or a surplus for further

and additional construction, it is a tax that is levied upon the producer and comes out of his pocket, and unhappily he can not pass the buck, but as to the manufacturer, the dealer, the purchasers at the central market, although equally levied upon his shipment, he can pass the buck, and history furnishes instances where he has failed to do it.

If, therefore, in this case the exigencies of the war have placed an additional burden upon the railroads on account of which they need more money than the operation produced in normal times or would probably produce in the future, any attempt to secure that fund by general advances in rates beyond what would otherwise be reasonable would be the most inequitable and unjust tax that possibly could be levied.

We opposed the advance of the rates in the Fifteen Per Cent case, tried out and finally decided by the commission last July, wherein the advance was denied except upon the class rates in the eastern territory, approximately a hundred million dollars to the eastern lines reaching the Atlantic coast, and for the same reason opposed the advances upon the rehearing of the Fifteen Per Cent case in November last, the outgrowth of which has been the Government control. If advances are again proposed, give us a hearing and decision of the tribunal organized and equipped to do it.

Not only did we oppose the advances upon the grounds mentioned, but demonstrated, as was found by the commission, that the financial showing of the roads did not justify the advances beyond those which were made in the previous cases. While that case has not been decided upon the facts, it may be remarked that the western lines had pending during that hearing an application for similar advances in the western district which upon the report of the commission to Congress was withdrawn, coupled with the statement that it could be better presented when the annual reports for the calendar year 1917 should come in.

Now, going back to 1910, Congress enacted that as to rates advanced after January 1, 1910, the burden of proof should be upon the carrier to justify such advances and the commission was authorized to suspend the effective date of such advances until it could hear and determine the question as to whether the advances were just and reasonable. Thus Congress took notice of the fact of the continual warfare for advances in rates and of the impossibility ordinarily of the shipper protecting himself against it, for he had better bear the burden of it than to go to the expense necessary to combat it.

Notwithstanding the provisions of this act of 1910, blanket applications were made to the Interstate Commerce Commission for advances in rates, both in the East and in the West, and after most thorough and complete consideration of the entire subject the commission refused such advance and made its findings of fact to show that the contentions of the railroads with respect to their financial condition did not justify them. Subsequently motions for rehearing were presented and ultimately they were granted in the eastern case, and again an application came on for advance of the western rates which was the subject of most elaborate investigation in 1914 and the commission again refused to advance the rates because they were not shown to be justified except as to a few commodities, and a motion for rehearing was made and overruled. This brought the matter down to the general application made in the early part of 1917 and decided in July of that year.

During the pendency of that case upon the blanket application for advances in rates and in fact provided for by law specifically but for convenience of undertaking the presentation of tentative tariffs, Congress had pending before it a bill to increase the number of commissioners and for other purposes, and among other things enacted that rates should not be advanced except upon approval of the commission when shown by the carriers to be justified.

So that Congress again recognized the continual warfare carried on for the advance of rates.

During all of this period complete and unlimited confidence was imposed in the commission by the public and by Congress to do justice in the premises and to determine what was just, fair, and reasonable. While Congress did not precisely enact that the previous raise should be deemed to be just and reasonable, or at least sufficiently high, it made it *prima facie* so as a matter of fact and again placed the burden of proof upon the railways to justify any advance.

It is difficult to find any basis rates on any important commodity moved in interstate transportation between principal points of production, sale, manufacture, and consumption that have not during the last few years been the subject of investigation by the commission and the maximum rates prescribed by the

commission. In several instances the courts have been resorted to to set aside the action of the commission, and the Supreme Court has in every such case recognized the superior ability and qualifications of the commission to determine and pass upon the facts, holding that the question of the reasonableness of the rates is a question of fact which can be better passed upon by those skilled in the business, as likewise is the question of whether a discrimination is unjust or unreasonable, and so they have accepted the decisions of the commission in all cases where there was any evidence to support its findings.

In behalf of the shippers whom I represent particularly in this matter and of shippers whom I have represented in various cases before the Interstate Commerce Commission and before the courts in these cases, I wish here to challenge any contradictions of the fact that the public generally reposes full confidence in the commission. It would be little wonder, therefore, that after this history and the years of effort on the part of the public to secure a hearing and determination of the rights of the shippers as against the carriers in this unequal contest, as it always is, they will look with the utmost disfavor upon the curtailment of power or the usefulness of the commission by anything in this bill or otherwise unless the absolute necessities of the war should require it.

Happily the situation as presented before this committee and before the Senate committee by the proponents of the bill in nowise controverts anything which I have here stated, but rather bears witness to both the correctness of these statements and the desirability of the commission continuing in the fullest exercise of the power conferred upon it by the act to regulate commerce except and only so far as it is absolutely necessary with respect alone to the matter of the operation of the railroads.

It is true that the bill does not expressly confer upon the interstate or the State commissions, and does not expressly reserve to the interstate and State commissions, and does not expressly reserve to the shippers the rights and remedies arising under the act to regulate commerce or before the Interstate Commerce Commission or the State commissions in so many words, but in the eleventh section does make them subject to all laws and liabilities as common carriers not inconsistent with the provisions of the bill or of the order of the President, yet it is consistently urged that under the provisions of the bill as drawn the President or the Director General while exercising the powers conferred upon him by the proclamation could supersede entirely all of the functions of the Interstate Commerce Commission or the State commissions with respect to rates and any law of any State or of the United States with respect thereto that would be inconsistent with the bill or the order of the President or the Director General.

It is stated that it is not desired at this time to take away those powers, but inferentially it is contended if no directly, that should occasion seem to require it, then the Director General may exercise such power.

It is this proposition that we contest.

First. Upon the ground that it takes away entirely the rights of the shippers under the act to regulate commerce and under the statutes of the different States which after a long struggle they have secured so that they might have a remedy against the power which the railroads would otherwise exercise in the matter of prescribing the rates and charges.

Second. No conditions or circumstances have been referred to which justify any such action.

Third. The fact that the railroads desire it is perfectly consistent with their continuous desire to be permitted to advance rates or secure their advancement in order to increase their revenues by whatsoever means might be at their command.

If the guaranty as proposed in the bill should not be made up from net earnings, and nobody contends that it would be within a degree of certainty, either the people must respond to it out of the Public Treasury, which the Director General says is already overburdened, or it must be levied upon the shippers.

Thus would be brought about the very condition growing out of this bill, namely, an advance in the rates which through these years of contention and effort the railroads have failed to secure through the commission.

It is little wonder, therefore, that the railroads do not desire to leave this matter to the commission, and still less wonder that the shippers shall imperatively demand that it be left with the commission to judge. This does not interfere with any activities of the Government with respect to the war, and none are pointed out, and it may be safely said that if in any case before

the commission it should appear that the exigency of the war required it they could be relied upon as the first to adequately respond to them, but not under the guise of the exigencies of war to levy undue burdens upon the shipper. Repeating again the proposition that the requirements for the payment of a rate above what is reasonable for the service is in the nature of a tax for any purpose that occasions the imposition of it, if it is for the exigencies of the war to meet conditions which the whole country is obligated to meet, then it would be most unjust to levy it upon the traffic of the country as a freight rate for those to pass on who can do it, and those like the producers, whom I represent, to pay it because they must pay it.

There is no sacredness to a dividend; in time of war that rises above the right of the producer of the meat and bread that feeds the Army to have a reasonable rate upon which it may be shipped to the points of consumption. It is amazing that the National Council of Defense, the head of transportation, should have so argued before the commission or that the proponents of the bill open the door to that accomplishment here.

GOVERNMENT CONTROL OF RAILROADS—OCCASION FOR IT.

The exigencies of war have required an abnormal increase in freight and passenger traffic, increased cost of supplies and labor, congestions at ports and elsewhere, taking locomotive cars and railroad material to the other side, so as to require unification of operation to utilize all tracks and facilities and provide additions and to route traffic on lines of least resistance to conserve transportation.

The ordinary shipper, producer, or consumer is not responsible therefor, apart from his general duty to the country as a whole. He should not therefore be required to pay for it in advanced rates levied for that purpose, nor the reasonableness of rates be determined and measured by this necessity. The country as a whole should pay for it—that is, pay for additional cost, if any, for the units of service caused by these conditions. The standard to him is what is reasonable.

Therefore, to make the Government control a means of advancing rates, which but for these conditions would be reasonably high, is taking away from the producer and shipper, who really bears the burden for the public purpose to pay its debt rather than for the service or what is reasonable pay for the service of transportation. This is essentially and fundamentally wrong. This can not be gainsaid and would not even be contended for were it not for the desire of the railroads to increase rates and prosper by the transaction.

For no other reason than those above mentioned do they ask for advances. It matters not that the Government pays for it; they want rates, when they get the roads back, that are higher than before; hence, to have them now decreed and put into effect or provide for it to be done from time to time.

This I am not guessing at; the application to accomplish it is now pending, and they will follow, one upon another.

It follows—and there is no uncertainty about it, for their action in the past proves it—and it is to their interest that control of each expenditure, the making of each improvement, part of which and labor on which may be chargeable to both capital account and operating expense, gives the widest scope possible to acquire the property out of operating expenses paid by the shipper or the Government, but to ultimately become the property of the railroad company without paying for it. Self-protection of the Government against railroads accomplishing this is a most important matter. Raising rates to pay it forces shippers to furnish capital. The closest supervision and accurate report of these expenditures must be so provided for as to be beyond the influence of the railroads. Unless it is done both the Government and shipper will get "soaked"—that is, those shippers who can not "pass the buck."

Another cognate and superlatively important matter is to take stock of what was received when the railroads were taken over and what is turned back, so that a balance may be struck in final settlement.

Since this bill provides for keeping in as good repair and additions and compensation for use, deducting betterments and excess revenues to go to the Government, this is vital, and the shipper should not be compelled to pay it by advanced rates.

His obligation begins and ends with what is reasonable.

The law has provided the method of determining and fixing that, and it would be a backward step to undo it. It stands to reason, and justice to the

helpless shipper demands that his rights be fully maintained to this standard. It follows that the bill must accomplish this.

To do it explicit declaration that all existing rights of the shipper and all existing remedies for their enforcement must remain intact, except where the exigency of the war and operation to secure efficiency naturally calls for some other action by the Director General than that so prescribed in these remedial statutes and procedure. That will rarely, indeed, if it ever should, relate to rates which the commission could not better determine than the Director General. At all events the shipper should have the right to have his rights tried out as to what he should pay and rates prescribed by the usual tribunals established and equipped for that purpose.

Now, this could not in anywise interfere with the operation of the roads or efficiency of the management or utilization thereof in the hands of the Director General, because as to the amount paid for the services the Government stands as guarantor for the amount of average net money obtained for three years to be the standard of compensation for the future.

That assumes it to be probable that the volume of traffic and the average receipts for handling it will probably amount to that. If it is more, the Government gets it; if it is less, it makes it up. The shipper as such has no direct interest in either.

The presumptions of law that rates are sufficiently high—*prima facie* at least—and the requirement that before they are advanced the carrier must show the advance proposed to be reasonable should in justice be applied here. Such we understand to be the intent of the bill until otherwise ordered by the Director General.

And as it is understood by those who prepared the bill that as to rates, liability for loss and damage or to suit, other than attachment or procedure taking over the property or interfering with the Director General, existing statutes and procedure continue and suits run against the carrier company and that requirements for safety appliances and generally for police regulations, State and Interstate, no charge is contemplated, it would seem to follow that specific limitation as to the qualifying words above should be that it should not affect the rights of parties at interest under the act to regulate commerce or the procedure, and that should proceed in the same manner as heretofore on subjects under its jurisdiction as to rates and charges, and its orders in respect thereto should be observed unless contrary to or in violation of the power of the Director General in the operation of the roads or direction of movement and handling of the traffic.

Indeed, there could remain no basis of determining discrimination or loss and damage because of diversion of traffic, and in so far as reasonableness of particular rates or schedules is dependent upon or to be ascertained by the amount of return afforded in the aggregate or even the profit per unit of traffic during Government control there would be no available data justifying increasing the rates to fit the future. That would be so as to the Director General making rates or the commission doing the same thing. So the commission would have to resort to the past operation for any evidence.

Surely it would not be contended that an arbitrary advance could be made just because of a desire for more money.

After the subject is viewed from all angles, who can say that we can improve on our existing method of regulating rates by adopting some new and necessarily untried method rather than submit the matter to the Interstate Commerce Commission to determine after full hearing, as provided by law, with the wealth of experience of its organization and its agencies.

These observations are not made out of a fear that the course outlined will not be pursued, but to meet the contentions that may be made by those who are without comprehensive knowledge or careful study of this important feature of railroad transportation as defined by the act.

Furthermore, the people after years of strenuous efforts, have evolved these regulatory systems and to now destroy them by the stroke of a pen, imperfect as they may be, must of necessity work the greatest dissatisfaction over the entire new regime of control.

The least change to accomplish needed service to further necessities of war is all that is desirable. It is no field and this is no time for needless and probably experimentation; we must stop on the hither side of that and look to doing simply the things that are necessary or apparently so.

Beyond all, it is not a school or clinic to teach the ways and dangers of Government ownership or exhibit or exemplify the dangers of it. To avoid that condition is the key to successful operation.

Let that experiment be made in time of peace, if at all.

This measure invites a deficit to be supplied in the end by a general and large increase in rates; that might as well be its declared purpose as its probable effect when you consider whether it shall be passed in this form. There are two controlling features underlying it:

1. To sustain the credit of railroad securities by practical underwriting.
2. To tax the shipper regardless of the reasonableness of the rates to supply the deficit.

There is no hint of any intention to help the shipper, and this record may be searched in vain for an intimation of it. The right and necessity of taking over these railroads means that it shall be on reasonable terms—their public duty; their duty to shippers and the right to compensation by the terms of the Constitution and statutes and the inherited common law is what is reasonable. When private capital built these railroads, they did not stock the public for more, although their efforts to do it have involved every specious course of reasoning and clever plan which great ingenuity could devise. That is brought down to date. It has been repeatedly asserted before this committee and the Senate committee that the Government owes no duty to the short lines to take them over in order to sustain their credit or prevent disaster to them or some of them, because it is said by the proponents of the bill that the fact that they may suffer because of the war furnishes no reason to take them over; that it is one of the things that can not be helped as all must expect to suffer the consequences of war. If so, it is a principle applicable alike to the other lines. The expressed opinion that the short lines will not be injured is no reason for not guaranteeing them if in either case we are to act on the idea that we must guarantee others to maintain credit by paying more than they can reasonably expect to make.

It is not so much the fact that the bill is insufficient to accomplish the desired object, but the object itself to which I direct your attention; in other words, its necessary effect. I invite you to submit it to the Interstate Commerce Commission for its opinion as to the effect of it. Bear in mind this is not a bill drawn by the commission, nor has it been, so far as appears, submitted to it. It has been repeatedly said that it is the purpose and expectation of the proponents of the bill that the commission will be continued in full control over rates and charges and that the bill so intends and expresses it, subject to the power of the President exercising the war power to order otherwise. But it is repeatedly asserted that but little interference with existing laws and interstate and State regulation will take place; as little as possible. Why? Manifestly because of the admission that these are the bodies most capable of performing the duties of administering the regulatory laws between carrier and shipper to do justice. Now, the standard of the law for them to follow is, What is reasonable. That is the only safe standard—yet the law does not define it. The determination rests in the judgment of the tribunal specially equipped to reach a correct conclusion. Then why not continue it? Shall a less competent and unskilled person, whomsoever he may be, undertake the job of setting aside what these commissions do or direct them what to do?

If, because of war, the shipper has no right to reasonable rates, let us say so; if he has, then let the tribunal best qualified determine it. There is no sound reason to place this dictatorial power in anyone's hands to determine rates and charges for ordinary commerce because of war. Can you imagine such a case? The demurrage rule of progressive charges to induce unloading cars is referred to. The director general had power to compel the unloading regardless of demurrage rules or charges. If the penal clause of this bill passes the fine is \$5,000. That is like his sending a coal train under New York contrary to regulations; he didn't have to fix the charge for it, nor ask anybody whether he could do it. So he simply can order unloading and let demurrage rules generally alone. The public will be satisfied to have the commission prescribe reasonable rates for the service, but not to measure the rates by the guaranty of more than is reasonable for the use of the property taken over. The value of the use is what it is reasonably worth, based on reasonable rates, and this applies to just compensation. That was precisely decided by the Supreme Court in *Smythe v. Ames* and followed by an unbroken line of decisions. If the Government or anyone sees fit to pay more for the hire, rental, or use of the prop-

erty, that does not give the right to charge higher rates than are reasonable—so it is of guaranteeing securities.

The three-year period is far beyond what is reasonable as a standard. The railroads asserted that they could not hope to reach that net during the war. This contention was made a year ago, and again recently before the commission. Are they to be excepted from disturbance of war? The commission held they had made, and probably could make, enough net to be reasonable. They refused advances of rates, therefore, but now it is proposed to make the exorbitant guaranty to all roads that will agree to it and let the others recover their damages. That is to say, those roads that profit beyond what they could expect, get a guaranty to keep it up, while the others are remitted to due process of law to prove their damage, which under the Constitution is just compensation. Why not make it just compensation as to both, and refer the matter to the Interstate Commerce Commission to determine whether the guaranties of this bill do not exceed that standard. I urge the committee to do that. If you pass this bill with this guaranty, you levy in effect a tax to guarantee the payment of an unjust compensation by shippers, if rates are to be measured by required returns. It is unconscionable and destructive of the business and commercial fabric of this country. You can levy a tax for the Government. You have put 3 per cent on all bills of lading; you can increase that, but you can not levy a tax for the railroads. You can command the service; you can take them and perform the service, but you can not levy a tax on the shipper in the form of rates for the purpose of paying admittedly an unreasonably high guarantee.

At first blush, there were only two objections which were fundamental, as it looked to me; one was the possible exercise of control over the commissions concerning rates, and the other was the elimination of incentive of "men behind the gun;" that is, employees actually doing the work, from manager to section men, to do it most efficiently. On inquiry as to the intention respecting the work of commissions and regular processes of law to secure and protect rights and remedy wrongs under existing law and procedure, I was informed that as little interference as possible would be the rule, so I supposed there could be no objection to putting in the bill language that would make that certain and limit orders to the contrary to such cases only as were necessary to the operation.

Listening to the proceedings before the committee, I fear that it is desired to have the complete power to set aside all laws, all regulations, all powers of commissions, legislatures, and Congress itself, reposed in the President by the words in section 11, page 8, line 1, "or with any order of the President." With those words stricken out, the "control" or "possession, use, and control" line 4, section 1, and section 10, coupled with the act of August 29 and the proclamation of the President—as I understand the asserted power of the Director General, it is deemed as complete now over rates and charges as it would be under this act. It was exercised in the matter of demurrage rules and charges. So, if that be correct, this bill adds nothing to it, nor does it take anything away so far as rates and charges are concerned. Hence, we are met at the outset with the proposition that what the bill seeks to do is to make an appropriation for purposes named and to authorize the making of an agreement for just compensation for the taking over, use, and control of the property, and to reaffirm whatever powers have come into existence, ratify the taking over and control, and to confer the power necessary or appropriate to give effect to the bill.

This to me is astounding, because if correct, the major premise is that the President may, without limitation, proclaim his power over transportation lines and, if he chooses, abolish all laws and regulations and transfer the power to the Director General by virtue of the act of August 29, 1917, the joint resolution of Congress pledging the resources of the country of date December 7, 1917, and empower, as has been done by the proclamation, the Director General to enter upon negotiations looking to agreements for just compensation and report it to the President for such action as he may deem lawful. An analysis of the bill, therefore, would leave it unnecessary, so far as power is concerned, and perhaps otherwise, except the appropriation and uses to be made of it, and except as a proposition for a contract upon named terms if accepted. I say an analysis of the bill appears to me to disclose that theory as the basis upon which it is drawn.

Under conceivable conditions of a state of war, creating the necessity, such power might exist, coextensive with the necessity, and such use or destruction

even of railroads or transportation facilities or property as the President deemed necessary might be resorted to. The right of just compensation, however, unless agreed on, can not be taken away in any case. This bill provides the method of such compensation; it does not detrmine the amount of it if not agreed to. That is even-handed justice. The usual and orderly processes of law are open. That is the best that can be done. Now, I ask, Why should not just compensation for the transportation service rest upon the same broad principle for the shipper, the railroad, and the public? Congress can so provide in this bill; no power exists to prevent it; none should be desired.

The extent of our territory, the 16,000 miles of railroads, our important ports over 1,000 miles of international border, our rail and water rates, our nearness to the Panama Canal, our production of one-third the cotton and 15 per cent of cattle in numbers bred and supplied to convert into beef, calls for the use of our local control to most efficiently carry these things on.

Most all our interstate rates on traffic coming into and going out of Texas and transcontinental and export through traffic are on rates already prescribed by the Interstate Commission; so is the system of southwestern rates covering a number of States—adjusted to necessities after years of effort. Our State rates are subject to adjustment to interstate system of the Southwest now before the commission. All our roads are incorporated in Texas except the Texas & Pacific. All their bond and stock issues are limited to official valuation. Our commerce and vast development are built on these things. To upset them would be a disaster. The whole Government needs what we have done. Both the State and National Governments want stabilized conditions; no Director General can improve it. Our State stands first in war; we can and will, by order of our commission, change any of it on the instant; our power in emergency is not restricted by law. Every emergency will be met; we can better do this than anyone else, and we will do it for the Government and whip Mexico besides and take it when you want it. An open field and a fair fight is all Texas wants to help win the war. But we stand as a unit against any law conferring power that will transfer to the military the control of our rates. Our railroads have increased their net earnings in two years enormously. But for the drouth destruction it would have been greater; that has cost Texas a half billion dollars. But like the Phoenix we will rise from the ashes more beautiful and grander than before. Our railroads will continue to prosper. We invite the President and the Director General to exercise all the war power necessary. Surely our Representatives in Washington know that—will see to it. Hence we refuse to surrender rate making, State or interstate, without a trial. That is now on in the Shnoepst case. Texas stands for State control of State rates and the interstate rates by the Interstate Commerce Commission.

There is no obligation to pay for the future the same money that was made in order to compensate for future use of the property; the past net earnings are but evidence of what may be expected for the future. It all depends upon the circumstances and conditions as they may transpire, and on these circumstances and conditions are evidence to be taken into consideration in arriving finally at the present sum of money agreed to be paid for future use. If the conditions were not to change, the past might be a fair standard for the future, but we know conditions will change so that any present estimate might be far wide of the mark. Yet if we contract to pay it, we would be obliged to do it. Considering the expected changes in conditions of every sort to a greater or less degree, we have no right to gamble at the expense of the future business and producing interest or the Government Treasury for the time reasonably necessary. Hence if a standard rate is agreed upon or provided for in the bill, it should be coupled with the condition that there shall be a readjustment, say, often—at least, every two years. I suggest that period because the carriers stated before the Interstate Commerce Commission that while they of course could not guess the duration of the war, still they thought it best to prepare themselves for two years. Probably I based the two years on the fact that one year's operation under Government control would hardly furnish a standard, but in the interest of public justice and fair dealing, the time ought not to extend more than is reasonable on a presently estimated standard—in my opinion, two years would be the limit. At the end of that time a readjustment of the standard rate should be made.

Now, as to what the standard rate should be—we start with the major premise that it should be the reasonable rental value, if there were such, but as there is no satisfactory standard of that character, it is the reasonable rate

of interest upon the value of the property and such consequential damages to established business as can be reasonably estimated. Merely expected profits are not usually a result of damage; that is too speculative. Still an established, going business, with a reasonable earning capacity, takes a different rule, so that we could in part estimate the future by the past. But if the past was not a guaranteed rate, though it happened to be large, it stands to reason that if we guarantee for the future a rate we put into the form of certainty by a contract what was an uncertainty; hence, it would be unconscionable to expect that the carriers would be entitled to a guaranteed standard as high as they happened to have in the past.

Another matter for most material consideration, as exemplified by Mr. Thorne's testimony and remarks, is the surplus accumulated in the past above the interest, fixed charges, and reasonable dividends. The amount of this surplus has been enormous for the principal systems of railroads. This surplus was earned from rates charged; and if it was too great then, inasmuch as the public was entitled to rates not higher than would afford a reasonable return on the fair value of the property, this surplus was, to a large extent, at least, an excessive return under the standards of the law. Of course, it was earned under lawful rates and in a lawful manner and they were entitled to it. If we conceive that the extent to which it was invested in additional property, the value thereof is as much a part of the total value of the property upon which to estimate a fair return—still there can be no justification for saying that they shall now be guaranteed a standard of return which embraced within it the accumulation of a large surplus.

So to that extent it is perfectly clear that surplus earnings in the past can not be used as an example of how much in the aggregate the carriers should be guaranteed for the use of their property for the future. What they would be entitled to for the future is the amount they could earn on reasonable rates and not to earn a surplus and to have a vested interest in the maintenance of rates high enough to produce such surplus, because they would efface and destroy the public interest and that of the shipper, to a reasonable rate based upon reasonable compensation.

What the carriers are entitled to is concretely and fully stated by the Supreme Court in the case of *Smythe v. Ames* (167 U. S.) and the *Reagan case* (154 U. S.). The standards there laid down by the Supreme Court have been inconsistently followed. Those were cases where the use—that is to say, the right of a return for the use—of the property was the issue, and not a taking of the corpus of the property. The court first inquired whether, under the Constitution, the action of the State authorities prescribing the rates which the railroads must charge amounted to a taking of the property for public use without just compensation. They answered that question in the affirmative, then passed upon the issue as to the value of the use, and held that the carriers had a right to charge for that use and for the services performed enough to afford a fair return upon the fair value of the property which the State could not take away.

Now, so far as the interests which I represent are concerned, we are willing to go further than that and to say that we will allow them the standard of return as provided for in the *Smythe v. Ames* case. Of course, that standard was, as stated by the court, conditioned upon the ability of the railroad to earn it, if they could, by charging reasonable rates. But we will assume that the present standard of rates is reasonable; that is, practically beyond peradventure, because they all bear the stamp of Interstate Commission or State commissions, or nearly so. Surely, that is true as to the great body of the rates throughout the country.

Our proposition, therefore, is to guarantee interest, fixed charges, and dividends for two years, plus 50 per cent—or, as I personally believe, it could be safely made at 60½ per cent—of such surplus as may actually be earned during that two years; the balance of the surplus to go to the Government for such uses as supporting the weaker lines and meeting extraordinary conditions, etc.

I would never, under any circumstances, take away the man power of a railway organization, or the operatives and laborers, skilled and unskilled, and the supervising agencies—for it would invite carelessness and inefficiency by blotting out the incentive for efficient service and economical operation. To clear a absolute guaranteed amount of money, regardless of whether any traffic carried, or how much, or the manner in which it is carried, or the service per-

formed, deprives the public of the chance of reasonable service or of due -- on the part of the railroad agencies and employees. It is the most reckless proposition that I ever heard anyone suggest, and one which ought to shake the public confidence in railroad presidents and others who would for the moment argue in favor of a standard of return with such risks. They say they want their organization turned back to them in as efficient condition for carrying on a good business as possible. They certainly know that such a standard as this would completely knock out all chance of that.

Now, as to the short lines, I have but little to say, but it is manifest that the wrong would be irremedial—that the Government operate part of the railroads and leave the rest to starve—and as certain as this committee approves any such law and it should be put into effect, just that certain it will be that these short-line railroads will recover the amount they have been damaged from the Government, and you might as well consider now that they will have to pay it as there will be no escape from it any more than there is an escape from damages in condemnation cases where property that is taken is damaged by reason of the fact of the adjacent condemnation and the uses to which the condemned property is put. I am surprised to see that attention seems not to have been directed to this significant, important, and certain principle of law.

The CHAIRMAN. If that is all, Mr. Cowan, the committee will now hear Mr. Prosser.

STATEMENT OF MR. SEWARD PROSSER, OF NEW YORK CITY.

The CHAIRMAN. Mr. Prosser, please state to the stenographer your full name, your address, and what interest you appear to represent.

Mr. PROSSER. I am president of the Banker's Trust Co. of New York. I am prompted to appear here due to the fact that our corporation represents, as trustee, bond issues to the extent of \$3,500,000, with issued securities against it of about \$1,500,000.

Under ordinary circumstances it is no part of the duty of a corporate trustee to interest himself in legislative matters incidental to railroads and things of that kind, but this is such an extraordinary situation that it seems, representing as we do a great many hundred thousand dollars, running all the way from wealthy corporations to individuals who only hold one bond, that we might properly speak at least on one phase of this situation.

It seems to us that the maintenance question incident to this new law, while it states, I believe, in the law that the maintenance shall be adequate, the question of what adequacy means might be veiled in a little bit of mystery if it were not explained, it seems to us in this way. If you take the maintenance which railroads need, the dollars they have spent in the last three years for maintenance, and a provision is made, and it might be said to be a liberal provision in dollars for an equal amount to be leavened through their expense account before figuring profits, it would be entirely inadequate to the situation that is confronting us. I mean by that that it takes to-day, I am informed, \$1.80, and I am using Dun's index figure there, to purchase the same commodities that before the war were purchasable for \$1.

Senator KELLOGG. You mean before 1914?

Mr. PROSSER. Yes; not before we went into the war, but before 1914. Therefore, if there is put into this bill a provision in dollars and cents, you will see that these roads will have maintenance provisions only equivalent to about 60 per cent of what their require-

ents are. In other words, it seems perfectly clear to me that maintenance under the circumstances that we are facing means placing back in these roads the suitable number of ties, the suitable number of rails, the suitable number of cars, and the rest without reference to what the cost of that is. That is the only way, I believe, that those roads can be returned to their owners, or even if the Government could continue ownership, that those roads can be maintained and safely regarded as being able to carry out the business this great Government is placing upon them.

I believe, and I started about a week ago to work up a brief on this, and last night, after I had gone home, I received through your courtesy a telegram to come here, and the brief is not prepared yet, but I will submit it in two or three days, if that will be agreeable to you. I think we will make that clear to you, that maintenance will be viewed from the standpoint of the physical units instead of dollars and cents.

Senator KELLOGG. Have you read the amended bill which has been submitted to the committee?

Mr. PROSSER. No, sir.

Senator KELLOGG. It is as follows:

The President is further authorized in such agreements to make all reasonable provision for the maintenance, repair, and renewals of the property, and for the creation of reserve funds therefor and for the depreciation thereof to the end that at the termination of Federal control either the property shall be returned to the carriers in substantially as good repair and in substantially complete equipment as at the beginning of Federal control or that just payment shall be made therefor.

Mr. PROSSER. I think that represents a pretty good spirit, but I think that the net result of this thing, gentlemen, proves that during, say, three years of Government ownership, in order to perform the task as set forth there, that it has cost the railroads or the Government two or two and one-half times as much as they have ever spent before in maintenance, unless it is made clear to-day that there will be an obligation to explain to the people of the country that the reason it costs so much was that a dollar bought so much less, and I think it is well that some point be made of that, so we will not have something to explain in the future.

The CHAIRMAN. I suggest to you, Mr. Prosser, that you take this bill; this is the last draft of the proponents; the administration has met the suggestions that have arisen in the hearings, and I would suggest that you take this and submit your brief, based on this amended form, not amended, but this suggested amended form.

Mr. PROSSER. This, in its present form?

The CHAIRMAN. Yes.

Mr. PROSSER. Yes; I will do that.

(The brief referred to is here printed in full, as follows:)

MEMORANDUM PREPARED BY BANKERS' TRUST CO. FOR THE UNITED STATES SENATE
COMMITTEE ON INTERSTATE COMMERCE.

Bankers' Trust Co. is trustee under railroad mortgages under which \$3,550,000 of railroad bonds may be issued and \$1,583,000,000 of bonds have already been issued. A large proportion of its assets consists of railroad securities. It also serves as personal trustee (with varying degrees of responsibility in specific cases) for holders of considerable amounts of railroad bonds. Its customers

and clients comprise bondholders in every walk of life, from the individual owner of one railroad bond to the large corporation which purchases bonds with surplus funds or temporarily idle money.

In none of its trustee relations, of course, has the company assumed active responsibility in respect of the relations of railroad mortgagors with the Government, nor is it under any such obligation regarding the present governmental action. But this is a unique and critical juncture. Assumption of control of the railroads by the Federal Government is unprecedented and is fraught with all sorts of possibilities for good or ill. Bankers' Trust Co., therefore, on behalf of the scattered millions of bondholders who can not directly present their case, has determined to present the bondholder's point of view in the light of its experiences in the matter, hoping that the presentation may be of constructive use to Senators and Congressmen in the framing of legislation requisite to proposed governmental action.

PRESIDENT RECOMMENDS ADEQUATE MAINTENANCE AND RETURNS.

The President has recommended legislation allowing the roads the average net railway operating income of the three years ending June 30, 1917. He has urged upon Congress that "It is * * * right and necessary that the owners and creditors of the railways, the holders of their stocks and bonds should receive from the Government an unqualified guaranty that their properties will be maintained throughout the period of Federal control in as good repair and as complete equipment as at present * * *."

PROPOSED BILL DOES NOT INSURE ADEQUATE MAINTENANCE.

The provision of the proposed bill with respect to maintenance follows:

"The President is further authorized in such agreement to make all reasonable provisions for maintenance, repair, and renewals of the property, and for the creation of reserve funds therefor, and for the depreciation thereof, to the end that at the termination of such Federal control either the property shall be returned to the carrier in substantially as good repair and in substantially as complete equipment as at the beginning of Federal control, or that just payment shall be made therefor."

It is evidently the intention of Congress that this paragraph of the bill shall provide for complete and adequate maintenance of the railroads during the period of Government operation. Adequate maintenance can not be secured in any other way than by renewing each year the standard number of physical units, such as ties, rails, yards of ballast, track fastenings, bridges, buildings, and fences. The physical necessities of the railroads must be met with physical equipment, and if any such renewals are deferred for one or more years, then the actual replacements must be made before the railroads are returned to the owners, or else an amount of money must be given them upon transfer which will enable them to make directly such a renewal of physical units. This policy is in conformity with the conception of maintenance embodied in the Interstate Commerce Commission's classification of accounts for maintenance of way and structures. If the provisions of the proposed bill were so construed by those charged with its administration as to include in operating expenses that amount of money for maintenance expenses which would be needed at the then prevailing prices to renew the standard number of physical units replaced during the three years ended June 30, 1917, maintenance on a truly adequate basis would be realized.

Unless there is some modification of the bill, however, there is no assurance that an amount computed in physical units will be included in the operating expenses for maintenance. The bill does provide that if standard maintenance is deferred it shall be covered by making a just payment therefor at the time the roads are handed back to their owners. The bill, as it now stands, might be so interpreted that the return to the railroads for deferred maintenance and renewals would be made according to the actual money expenditures of the railroads for maintenance renewals during the three years ended June 30, 1917. The greatest injustice would result if the payments for deferred renewals were made on that basis, and injustice must inevitably be the result of any policy which provides for maintenance in money terms, unless the money terms are adjusted to the very greatly increased cost of the things necessary to the physical maintenance of the roads. It is not sufficient nor fair to give the railroads

an amount of money which would have purchased the needed number of rails or other physical equipment in the three years' period, because that same amount of money now would buy only 60 per cent of what it would have bought during the years 1915-1917. Commodity prices to-day are 75 per cent higher than they were at the beginning of the European war in 1914. Examination of any of the standard index numbers will confirm this fact. The prices of metals, according to Dun's Review, were, in 1917, 82 per cent higher than in 1914. The great amount of Government financing which remains to be done will undoubtedly drive prices still further upward.

The law should be made specific on this point and should provide for the inclusion in operating expenses of an amount sufficient to maintain the standard of actual physical maintenance during the three years ended June 30, 1917. This means that the railroads should be allowed to include in their maintenance expenses for each year that amount of money which would be needed to replace, at the then prevailing prices, the average number of ties, rails, bridges, amount of ballast, etc., actually renewed during these three years. Moreover, an additional allowance for maintenance would be equitable because the more intensive use of the facilities under the spur of war necessities will cause greater wear and tear.

It may be that during the war public policy will make it inadvisable to use the labor and material of the country to preserve normal physical maintenance and shall dictate that labor and material be applied to other uses more important in the emergency. In such cases the excess of the maintenance allowance included in the operating expenses over and above the actual disbursements for maintenance should be retained by the railroads as a reserve against the time when replacements are actually made. The British practice in respect of deferred maintenance, under which such a reserve has been invested in war loans, may well be worth copying.

RAILROADS HAVE NOT SHARED IN RECENT PROSPERITY.

The change in the purchasing power of money is quite as important when considering the adequacy of the Government's guaranty to the railroads and in comparing that guaranty with the earnings of the railroads in the past. It takes \$1.75 to-day to purchase the same amount of commodities as \$1 would have purchased in 1914. The impression that the railroads are guaranteed higher earnings than they ever received previous to 1916 is untrue. If the gross income of the railroads available for fixed charges, dividends, and surplus is converted into units equal to the purchasing power of the dollar in 1910 the proposed guaranty turns out to be only 70 per cent of the gross income of the railroads for 1910 and is lower than the earnings of any year between that date and the present time. The following table shows that while the railroads earned gross income amounting to \$124 in 1917 for every \$100 earned by them in 1910, the purchasing power of this \$124 in 1917 was equal to only \$72 of earnings in 1910. The true earnings, as contrasted with the money earnings of the railroads during 1917, instead of being larger were only 72.63 per cent of the earnings in 1910. The average of 1915-1917 which it is proposed to guarantee to the railroads will, if present prices continue, have a purchasing power of only about 65 per cent of the average income for the four years 1910-1913, inclusive.

This table shows in column 2 the income available for fixed charges, dividends, and surplus for the railroads for the years 1910-1917, inclusive. Column 4 shows the deductions for railroad fixed charges and dividends, and column 6 shows their surplus or reinvested earnings. Columns 3, 5, and 7 show the same facts as columns 2, 4, and 6 reduced to the purchasing power of the dollar in 1910, using Dun's index numbers.

1182 GOVERNMENT CONTROL AND OPERATION OF RAILROADS.

Gross income, interest and dividend deductions, and surplus of railroads in the United States, 1910-1917.

[000 omitted.]

Year.	Gross income.		Deductions for interest, dividends, etc.		Surplus or retained earnings.	
	Actual figures.	Purchasing power.	Actual figures.	Purchasing power.	Actual figures.	Purchasing power.
1910.....	\$1,084,448	\$1,084,448	\$919,055	\$919,055	\$165,393	\$165,393
1911.....	1,079,418	1,100,324	989,784	1,008,954	89,634	91,379
1912.....	1,011,640	971,796	958,391	918,723	55,249	53,633
1913.....	1,118,253	1,099,590	957,163	941,163	161,090	158,267
1914.....	992,519	968,311	1,025,178	1,000,173	12,689	13,882
1915.....	974,186	919,023	926,411	873,971	47,755	45,082
1916.....	1,274,510	1,000,000	953,896	763,117	320,614	254,491
1917.....	1,350,000	787,631	1,000,000	583,430	35,000	204,281
Total.....	8,884,954	7,950,701	7,727,878	7,008,586	1,157,076	942,115

PERCENTAGE OF EACH YEAR TO 1910.

1910.....	100.0	100.00	100.0	100.00	100.0	100.00
1911.....	99.6	101.46	107.7	109.78	54.2	55.59
1912.....	93.8	89.61	104.1	99.96	33.4	32.00
1913.....	103.1	101.39	104.2	102.41	97.4	95.77
1914.....	91.6	89.29	111.5	108.93	.....	.....
1915.....	89.8	84.74	100.8	95.09	28.9	27.54
1916.....	117.6	94.02	103.8	82.03	193.8	158.06
1917.....	124.6	72.63	108.8	68.45	211.6	128.06

¹ Deficit.

In the case of industries not subject to public regulation the rise in prices which has led to the present reduction in the purchasing power of money has been accompanied by industrial prosperity, with its attendant increase in the output of goods and with unusual profits. The last three years have been no exception to the rule. Even under regulated rates, the railroads have been enabled, by reason of their increased production of transportation service, to increase somewhat their mere money profits as against their true profits. In the case of other industries the increase in the level of prices has been accompanied by an increase in income which has more than offset the decrease in the purchasing power of money. This remains true even when we allow for the increase in the capital investment needed to produce these added earnings. The following table shows the facts for industrial corporations of the United States corresponding to those shown in the table above. The money earnings of the industrials in 1916 were 340 per cent of the earnings of 1910. Even in terms of purchasing power the earnings of 1916 were 272 per cent of the earnings of 1910. In 1917 the income of the industrials suffered a reduction through excess-profits taxes, which absorbed a considerable percentage of their net income, but even after deducting this the amount available for interest, dividends, and surplus, when expressed in terms of purchasing power, is 170 per cent of their income for 1910. In no previous year except 1916 have industrials received so large a return in units of purchasing power. The prosperity of these enterprises is typical of the greater portion of American industry at the present time. It is evident that the railroads have done their share in the increased production which has made this prosperity possible, since their product, in the form of transportation service, has necessarily kept pace at every step with the increase in national production. Transportation is an incident to production, both as regards raw materials and finished product. The product of the railroads has increased as rapidly, therefore, as has that of industry in general. They have not, however, as these tables clearly set forth, received their just share of the return.

gross income, interest and dividend deductions, and surplus of industrial corporations in the United States, 1910-1917.

[000 omitted.]

Year.	Gross income.		Deductions for interest, dividends, etc.		Surplus or reinvested earnings.	
	Actual figures.	Purchasing power.	Actual figures.	Purchasing power.	Actual figures.	Purchasing power.
.....	\$1,870,277	\$1,870,277	\$1,367,655	\$1,367,655	\$502,622	\$502,622
.....	1,778,728	1,813,178	1,342,128	1,368,122	436,600	445,056
.....	2,131,333	2,047,390	1,463,199	1,405,571	668,134	641,819
.....	2,504,579	2,462,712	1,855,976	1,824,951	648,603	637,761
.....	1,958,598	1,910,827	1,638,622	1,598,655	319,976	312,171
.....	3,054,192	2,881,313	1,779,192	1,678,483	1,275,000	1,202,530
.....	6,370,890	5,096,712	2,580,447	2,064,358	3,790,443	3,032,354
.....	5,500,000	3,208,368	3,000,000	1,750,392	2,500,000	1,458,577
.....	25,168,597	21,291,277	15,027,219	13,058,087	10,141,378	8,233,190

PERCENTAGE OF EACH YEAR TO 1910.

.....	100.0	100.00	100.0	100.00	100.0	100.00
.....	95.1	96.94	98.1	100.03	86.9	88.54
.....	113.9	109.46	107.0	102.77	132.9	127.69
.....	133.9	131.67	135.7	133.44	129.1	126.88
.....	104.7	102.16	119.8	116.89	63.7	62.11
.....	163.3	154.05	130.1	122.73	253.6	239.31
.....	340.6	272.51	219.4	150.94	754.1	603.81
.....	294.1	171.57	188.7	127.97	497.4	290.19

¹ After deducting excess-profit taxes.

SAFETY OF RAILROAD BONDS IS THREATENED.

The margin of safety for railroad bonds and stocks has been but little increased by reinvesting earnings since 1910. The total reinvestable surplus of railroads since 1910, by the most liberal computation, amounts to \$1,157,000, or \$145,000,000 annually. If these surplus earnings be expressed in terms of purchasing power of the dollar in 1910, the total amount is \$942,115,000, \$118,000,000 annually. Under the Governmental guaranty, while earnings available for reinvestment will aggregate \$200,000,000 annually, when equated the purchasing power as of 1910, if present prices continue, they amount to only \$110,000,000.

Practically all new capital will be represented by an increase in the issue of bonds, and none by stock. The margin of safety will therefore become more and more inadequate. If this is accompanied by undermaintenance and by deterioration of operating efficiency, the roads will be returned to their owners in a condition which will mean a deteriorated security for the bondholder.

The graphs appended to this memorandum show respectively (1) the income available for fixed charges, dividends, and surplus of the railroads in comparison with the like income of the industrials, and (2) the commodity value of same earnings, taking 1910 price levels as a base.

The foregoing tables and these graphs show that the railroads as a whole have not received reasonable compensation for services rendered. In recent years the railroads have not been adequately maintained, yet notwithstanding this false saving as has been accomplished by the neglect (unavoidable in many instances, because of inadequacy of revenues) of this imperative necessity, the margin of safety afforded to bondholders in earnings has not been ample nor persistent enough to attract investment in railroad securities sufficient in volume to care for capital requirements; nor has this margin been sufficient to afford any appreciable contributions to the property from earnings. Issuance of stock practically ceased some years ago; the skepticism of investors has debarred large long-term bond issues practically impossible. The ex-

pendent of short-term borrowing with heavy attendant charges has been largely resorted to to care for absolutely necessary capital requirements. A deficiency in physical capacity due to insufficiency of maintenance and betterments expenditure naturally has resulted.

It is requisite to our national well-being that under normal operating conditions the railroads as a whole shall consistently be allowed revenues adequate to provide sufficient maintenance and depreciation of property, a fair return to labor, and necessary revenues to care for fixed charges, with a margin thereafter sufficient to attract new capital, preferably through stock issues. These represent the costs of transportation service, and sufficient revenues to adequately cover them can be regarded only as reasonable compensation for services rendered.

PRESENT BILL WILL REDUCE OPERATING EFFICIENCY.

Under the proposed guarantee of earnings, the operating efficiency of the railroads becomes a matter of the highest importance to the Government. The present plan gives to the security holders a limited return which is absolutely guaranteed by the Government. Such a proposal might conceivably result in a diminution of effort to achieve economy, because there is no longer the incentive of increased profits as a stimulus. The Government, assumed to be entitled to the surplus earnings above the guarantee, and being obliged to make good deficits, if any, has the strongest interest in promoting efficient and economical operation. Moreover, the public which is served by the railroads is vitally concerned in the matter, so that if, or when, the roads are returned to their owners, it shall be with efficiency unimpaired.

The proposed law should be amended to allow the railroads to share in the surplus earnings over and above the Government guarantee. As our present accounting and statistical systems are not adequate to furnish an exact test of the operating efficiency of each particular road, a bonus could be distributed to the various properties pro rata to their guaranteed earnings. It is more than likely that a bonus, such as that above described, would cost the public nothing, since the stimulus to efficiency would save a large part, if not the whole, of the additional amount paid. The principle here involved has been used by the Government in contracts for the supply of war materials. These contracts have frequently been based upon cost, plus a fee or percentage. In addition there has been an estimated standard cost, and the contractor has been allowed to participate in any savings, if his actual cost were kept below the standard fixed. While the interest of the Government and the public is the primary consideration, the bondholders of the railroads are also interested in the maintenance of efficient and economical organization.

GOVERNMENT OPERATION AND RATES.

Governmental assumption of regulatory powers over operation of railroad lines carries with it a responsibility to those whose funds constructed the Nation's railways. Bankers Trust Co. hopes, as a possibility under Federal management, for a broader conception of governmental responsibility to bondholders in the establishment of a rate structure allowing reasonable compensation to the carriers, in the enforcement of liberal maintenance expenditures or reserves and in the development of extension of railroad facilities so that the carriers, independently and collectively, may render the fullest requirement of service to the Nation and so best serve their own best interests.

It is a matter of grave apprehension that deficiencies in operating revenues may in any part be paid by the Government during the period of its management out of the proceeds of governmental loans or taxation, as an unintentional and, we feel sure, an undesired subsidy to private shippers. The rate structure should be increased to compensate not only for full maintenance but for continuing increased operating expenses and capital charges which are incurred during the period of Government management. So that when governmental management shall cease the bondholders will receive their properties back in at least as good physical condition, with an earnings capacity commensurate with the requirements under the then operating and economic conditions.

Respectfully submitted:

BANKERS TRUST CO.
SEWARD PROSSER, *President.*

In regard to the question of maintaining another aspect of these roads, there is the question of the personnel. I think it is of the greatest importance that these roads, when returned to their owners, be returned as efficient operating units; that the people in controlling—I do not mean any one particular person, but by and large, that they should be kept tuned up so that the day the Government subsidy is withdrawn and they are handed over to their owners that they will not be outcasts, but they will be running, efficient organizations.

I believe that the rates should be such that the Government should pay comparatively little money to the railroads, because otherwise it will amount to this, that if the people who are shipping over the railroads of the United States are contributing to the railroads an amount less than the proper cost of that transportation, you will be virtually giving a subsidy to the shippers, and when the roads are returned they will be in bad shape.

I think there is another point here, and it will take me about two minutes just to mention it. I am not sure whether it is in this amended bill. I think this bill, as I have seen it, fails to cover the point that the roads that have recently got out of the hands of receiverships—it seems to me that a great injustice will be done them. I do not undertake to say how it shall be regulated, but it seems to me that new organization—reestablished, recapitalized—are not adequately covered by this bill, as I read it.

Now, gentlemen, that is all I am going to say to you. To-morrow I am going to ask if you will be good enough to hear Prof. Friday, who has technical experience along these lines, and he has some points and will elaborate what I have just said in a technical way.

The CHAIRMAN. I think it fair to state that the hearings will be closed to-day. The committee will restrict itself after to-day to hearing arguments from certain individuals that the committee considers the parties really in interest, and if you are through now, Mr. Prosser, we will hear from Mr. Shorthill.

Mr. PROSSER. I thank you very much, gentlemen.

STATEMENT OF MR. J. W. SHORTHILL.

The CHAIRMAN. Will you give your full name, address, and also in what capacity you appear before the committee?

Mr. SHORTHILL. My name is J. W. Shorthill; residence, York, Nebr. I was subpoenaed to appear as a witness, and for that reason am not appearing to represent anybody. My connection is with the Farmers' Grain Dealers' Association, the State Association of Nebraska, and, in a larger way, with associations in 10 other States.

I sympathize fully with the members of this committee and will make my statement as brief as it is possible.

A bewildering maze of testimony has been presented, much of which has been duplication and repetition and on the whole leading to confusion, and yet your committee will desire some light that will illumine the future pathway of the step in advance which is about to be taken into a largely untried field so far as our own Government is concerned. If information is to be had indicating the success or the failure of governmental control in our own Government in any line, and the reasons for the success or the failure, it will certainly be valuable to your committee making some of the decisions that must be made. I will attempt to suggest to the committee some sources of such information.

When any governmental control is proposed the first tendency is to create uncertainty. Of all the difficulties to be overcome in such a case probably the greatest is uncertainty in the mind of the public in the future. If uncertainty can be removed by definite legislation, the extent that the legislation is definite, confidence will be established and the foundation for successful outcome will be laid. There is no human intellect nor group of human intellects that can fathom and anticipate all conditions that may arise and legislate in advance to meet them, but it ought to be possible for the Congress to decide, in this bill, on at least a few essential things and legislate on them definitely by conferring authority or by denying it and by laying the basis of a policy. The Congress, in this instance, must perform its part with certainty, if governmental control of the operation of our railroads during the war is to be a success.

I want to call your attention to some of the results of governmental control as exercised by the United States Food Administration by pointing out some effects that have been more successful and some that have been less successful, and citing the reasons for the different results. I do this with much reserve because of my direct connection with the Food Administration, although my connection is in a minor

capacity, and do it for the purpose of giving your committee the benefit of the experience of the Food Administration as I have seen its workings. The objects of the legislation creating the Food Administration were probably four, namely, to increase production, eliminate or lessen speculation, to secure sufficient distribution, and to decrease in some instances consumption, all of which have been sought in the attempt to handle our wheat problem. The first object, that of increased production, has been approached in two ways—by an appeal to patriotism and by a promise of profitable return. The Government has said to the farmer: "We need more wheat to carry on the war, and if you will produce all you can we will see to it that a surplus shall not glut your market, whatever comes." The one element that will be most basic in bringing about the desired increased production of wheat will be the certain element of the guaranteed minimum price guaranteed by Congress as well as by the President. It now appears that there is a possibility of greater profit in raising either corn or flax than in raising wheat, but the certainty of the wheat price is working to save the day, and that certainty has been fixed in the minds of farmers positively because the price was placed there by an act of Congress.

No identical edict coming from a delegated authority could have established that confidence to an equal degree, I care not to what man the authority might have been delegated. This is a most striking illustration of the high value of positive legislation by Congress on a matter of governmental control. Let us contrast this with a feature of production concerning which Congress did not speak, but which has been very much affected by governmental control of food—our meat production. During the entire late summer and early fall there was much unrest and uncertainty in our live-stock industry, due to the fact that no one knew, nor could anyone learn, what was, if anything, to be done with the live-stock industry by the Government. Feeders all over the country were hesitating to buy cattle for which they must then buy corn and hay at unheard-of high prices after paying the same high prices for the cattle, and many who owned their cattle already decided not to take the chance and sold the cattle at the central markets in an unfit condition and at an age that is extravagant at all times. Had it not been for the timely help of nature, which provided an overabundant supply of uncommonly soft corn, that could be saved only by feeding it to cattle, our country might well be greatly exercised over the short supply of its beef in the immediate future. As it is, the policy of the Government toward wheat for 1918 is settled, but it has none yet toward beef. I am not attempting to say here that no price should have been set on wheat or that prices should have been set on beef, cattle, corn, and hay, but I am pointing out an instance of the result of a definite policy as compared with an indefinite one and how, when Congress can act and does act in the matter, that action goes further toward establishing the confidence of the public than any other agency can go, and lays the most secure foundation possible for the future success of the venture.

The Food Administration Grain Corporation was created to preserve the price and control the distribution of wheat. The specific objects have been accomplished. This has been done by a system of

licenses. It was at first thought that it might not be necessary to license all grain dealers and millers, but later the decision was reached that it was necessary and all were licensed excepting a few small millers, and they who were left out have constituted the most disturbing element of all. The control of wheat was taken for war purposes, but wheat for war purposes when the supply is so limited could not be made successful without full control of all wheat. Control based on any other idea would have been a failure. Control of the movement and the distribution of our wheat is being exercised not only for war purposes but for domestic purposes as well, and for that reason it is a success. The same will be true of the control of the operation of the railroads. If this control succeeds it will be largely due to the fact that it is complete and universal. The selective draft law is another illustration of the wise application of this same principle.

Now, I want to speak briefly of a few other things that have occurred to me to be dealt with in a positive way by Congress in the legislation, but I do not want you to construe that because I have mentioned only those, that I think those and those only are the ones that should be legislated on. I am only suggesting.

To my mind, it would be a grave mistake for Congress to fail to say, as nearly definitely as it can say, how long the control proposed by this bill is to be exercised. It is true conditions will have been changed by the war, and at its close a readjustment will be necessary. That will take time, but the readjustment of our railroads will no doubt be accomplished much more quickly than the readjustment of many of our other institutions that are being affected much more adversely than our railroads. There ought not to be left in this bill any possibility for any influence outside of Congress to lengthen or shorten the life of this law. The public ought not to be confronted with that uncertainty. After hostilities have ceased it is not probable that the terms of peace will have been decided and agreed upon within six months. During that period our country, at least, will no doubt be approaching normal conditions, and, considering that fact, it ought not be necessary to retain the control very long after the declaration of peace, but by all means the termination of this control should be made automatic.

It would be a serious mistake if control were extended to some roads only and not to others. The shippers of this country understand that the Government is taking over the railroads and they desire that thing to be done. Obviously it ought to be done, but if that is not the intention, then Congress ought to say so in order that the people may know.

I just want to make a few brief observations as to why shippers desire all of these railroads to be taken over and why it is necessary to take over the small roads.

Senator TOWNSEND. Where do you come from? I did not get that.

Mr. SHORTHILL. Nebraska, and I am speaking of the grain-producing territory. In that territory there are many railroads which have already been compared to cripples. That is, if they are taken over they will become to the Government a liability instead of an asset. They are not short-line roads by any manner of means. We have in that territory roads that are serving their community much

better than other roads are serving their community, and their communities are so closely located that their interests become closely connected.

For instance, one road has been able to maintain a greater supply of cars than the road in the adjoining territory—almost in the same territory, and probably tapping a part of the same territory. The result is that this road having the liberal supply of cars is carrying all the business or a very much greater part of it, while the rolling stock and the rails and other facilities of these other lines that tap the same territory are not being used.

Now, what the shippers of localities of that kind want to see done is an evening up so that the community can be as nearly as possible uniformly served, so that they will get the average service and the most efficiency out of the equipment that is had on all of the roads, and that there will be as little waste as possible.

As to taking over short lines, I have thought of this. Suppose that the line under consideration is a little line of road operated by a stockyards company in shipping the cars of stock and other commodities that come into that yard to the places where they are to be unloaded. There is a line which is peculiarly the property of that industrial plant, the stockyards company. But, if the Government does not take over such lines as that, where will it get with the enforcement of its universal demurrage rule? This is just one instance. A demurrage rule is just an incident in operation. The purpose of a demurrage rule is to impose a penalty to induce the prompt unloading and return of cars to the use of traffic again so that they may not be held by some shippers to the exclusion of others.

Supposing, in this instance, that the cars placed on this industrial track of which I speak, which belong to the stockyards company, are placed on this line, but when they are placed there, they go beyond Government control, because that road has not been taken over. How can this universal demurrage rule be applied to that line? I cite this only as one instance making it necessary to take over these little lines of road. Many others will suggest themselves to your minds.

During this, governmental-control rate litigations should be stopped if possible. They require much time, talent, and money. The relation of rates is now fairly well established, and there will be little to be gained by unlimited litigation during the war, and, as has been many times suggested to your committee, it may be not at all fair for a class of traffic or shippers to bear alone a burden placed on that class wholly by war conditions and necessity. Anyway, rate litigation will not win the war, nor help to, and they ought to be prohibited by this bill.

All commissions, both National and State, should be left free to assist in the capacities in which they now operate, and there will be plenty for all to do; and, by all means, shippers should not be deprived in the least of the excellent service they are getting from their State commissions and the Interstate Commerce Commission.

There should be positive provisions in this bill for the disposition of surplus earnings. Interest and dividends must be cared for. Anything above that is surplus, and Congress should provide positively for its disposition.

The burden of my plea is positive action—positive action by Congress—action which can not be wrongly interpreted. I have tried to

direct all of my remarks to that one point. I feel that it should be taken on the following points:

First. Time limit of the law.

Second. Inclusion of all roads.

Third. Cessation of rate litigations.

Fourth. Preserve present status of commissions.

Fifth. Prescribe the disposition of surplus.

Gentlemen, I thank you for your time and patience. I know how you are situated.

Senator GORE. Just one question, Mr. Shorthill. You think the wheat price-fixing policy has been satisfactory?

Mr. SHORTHILL. I might say in reply to that question this: That the idea of selecting one commodity to the exclusion of other commodities and fixing a price on it has not been satisfactory; but the taking over of the control and the distribution of our present wheat crop at what has been construed to be a fair price has been submitted to by producers of wheat as a war necessity.

Senator GORE. Construed by whom?

Mr. SHORTHILL. Construed by our Government. In normal times I do not think the policy of price fixing would be satisfactory under those conditions at all.

Senator GORE. The price fixing has lost the wheat producers about half a billion dollars, has it not?

Mr. SHORTHILL. Taking it on the basis of what the open market was at that time; yes.

Senator GORE. Yes; about half a billion dollars. Do you know how much the winter-wheat acreage has gone down in your State? How much less was sown last fall than the fall before?

Mr. SHORTHILL. Acreage in our State of winter wheat is probably 80 per cent of what it was before.

Senator GORE. It is off about 500,000 acres, I think.

Mr. SHORTHILL. The reasons for that are largely physical, however.

Senator GORE. As to Kansas and Oklahoma and Nebraska, all of which are winter-wheat States, I would like to remark in this place that in my State the State Board of Defense reported in December that the farmers had been feeding 40,000 bushels of wheat a day to their stock. I just throw that out to show that that it has not been such a blazing success in that locality.

Senator POMERENE. That opens up a very broad subject, I suggest. Senator Gore, that we can not discuss this evening.

Senator GORE. I am through.

Senator POMERENE. I move the committee adjourn until 10 o'clock in the morning.

The CHAIRMAN. The committee adjourns until 10 o'clock in the morning, and let it be understood that in the morning the argument will begin.

(Thereupon, at 6.05 o'clock p. m., the committee adjourned until to-morrow, Friday, January 25, 1918, at 10 o'clock a. m.)

GOVERNMENT CONTROL AND REGULATION OF RAILROADS.

FRIDAY, JANUARY 25, 1918.

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE COMMERCE,
Washington, D. C.

The committee met, pursuant to adjournment, at 10 o'clock a. m., in the hearing room of the committee, Senate Office Building, Senator Ellison D. Smith, of South Carolina, presiding.

The CHAIRMAN. The committee will come to order.

Mr. S. H. COWAN. Yesterday evening, in closing my statement, I filed a typewritten brief of argument, and intended to file a table, which I now present, marked as my exhibit. The summary on the front page shows what the table contains.

It is a comparison of the three-year period of earnings on each of the principal systems of railroad, averaged in each district, and the total figures of all the railroads for each district averaged, and the grand total of all railroads in the United States, figured out per mile of line, single track, showing the net operating revenue for the three-year period ending June 30, 1917, and the three-year period ending June 30, 1916, which will be found a convenient and valuable compilation in arriving at the standard return, and the comparative results of each of the different three-year periods.

As the last page will show, the three-year period ending 1916 is \$3,403 per mile, single track, for the entire United States; whereas for June, 1917, the three-year period, it is \$3,990 per mile, single track, a difference of \$587 per mile higher for the three-year period ending June 30, 1917.

SUMMARY.

Analysis of railway operating income and railway operating income per mile of line operated for the principal railroads and systems of railroads in the eastern, southern, and western districts, as classified by the Interstate Commerce Commission, and the railroads of the United States as a whole. For the fiscal years ending June 30, 1917, 1916, 1915, and 1914, and the three-year average for the years 1917-1915 compared with the three-year average, 1916-1914.

These figures were compiled from the sworn statement as published in the New York Commercial and Financial Chronicle taken from the railroads' sworn report to the Interstate Commerce Commission.

NATIONAL LIVE STOCK SHIPPERS' PROTECTIVE LEAGUE.
I. A. RICE, *Statistician.*

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Eastern district.

Eastern roads.	Fiscal year ending June 30—	Mileage of single track operated.	Railway operating income.	Railway operating income per mile of single track operative.
Baltimore & Ohio.....	1917	4,545.23	\$28,657,509	36.385
	1916	4,539.38	28,639,064	6.389
	1915	4,535.27	24,581,697	5.420
	1914	4,478.22	21,506,370	4.903
3-year average, 1917-1915.....			27,292,757	6.011
3-year average, 1916-1914.....			24,909,044	5.511
Boston & Maine.....	1917	2,301.99	12,419,251	5.385
	1916	2,301.05	13,888,579	6.034
	1915	2,301.90	8,779,110	3.814
	1914	2,301.90	7,345,050	3.147
3-year average, 1917-1915.....			1,695,646	5.082
3-year average, 1916-1914.....			9,970,913	4.323
Central Railroad of New Jersey.....	1917	683.75	9,815,000	14.355
	1916	683.93	10,505,758	15.361
	1915	680.65	8,357,126	12.275
	1914	677.93	8,169,794	12.051
3-year average, 1917-1915.....			9,557,295	13.998
3-year average, 1916-1914.....			9,010,893	13.206
Cleveland, Cincinnati, Chicago & St. Louis.....	1917	2,385.58	13,157,834	5.524
	1916	2,382.96	12,717,953	5.317
	1915	2,372.74	7,342,192	3.053
	1914	2,363.16	2,669,692	1.139
3-year average, 1917-1915.....			11,079,994	4.675
3-year average, 1916-1914.....			7,543,279	3.173
Delaware & Hudson.....	1917	882.30	6,607,606	7.490
	1916	885.63	8,891,456	10.040
	1915	880.55	7,339,504	8.335
	1914	880.55	7,105,330	8.069
3-year average, 1917-1915.....			7,612,855	8.621
3-year average, 1916-1914.....			7,778,786	8.515
Delaware, Lackawanna & Western.....	1917	955.12	16,780,213	17.569
	1916	956.54	17,609,604	18.419
	1915	958.94	13,526,152	14.111
	1914	959.81	12,515,985	13.041
3-year average, 1917-1915.....			15,971,980	16.697
3-year average, 1916-1914.....			14,550,580	15.175
Erie Railroad.....	1917	1,987.84	12,389,589	6.236
	1916	1,987.84	20,333,154	10.229
	1915	1,987.84	11,807,089	5.949
	1914	1,987.84	13,294,526	6.688
3-year average, 1917-1915.....			14,843,261	7.468
3-year average, 1916-1914.....			15,144,906	7.629
Lehigh Valley.....	1917	1,443.12	11,046,293	7.654
	1916	1,443.99	12,574,714	8.719
	1915	1,443.52	10,871,803	7.531
	1914	1,439.99	10,423,461	7.239
3-year average, 1917-1915.....			11,497,600	7.965
3-year average, 1916-1914.....			11,290,993	7.869
Michigan Central.....	1917	1,853.84	12,549,691	6.780
	1916	1,808.26	12,396,101	6.875
	1915	1,800.04	7,350,375	4.080
	1914	1,799.74	5,870,141	3.262
3-year average, 1917-1915.....			10,786,022	5.908
3-year average, 1916-1914.....			8,539,596	4.746

Eastern district—Continued.

Eastern roads.	Fiscal year ending June 30	Mileage of single track operated.	Railway operating income.	Railway operating income per mile of single track operative.
New York Central.....	1917	6,139.70	\$60,801,787	\$9,903
	1916	6,031.22	67,509,927	10,895
	1915	4,801.89	34,481,709	7,273
	1914	3,753.67	20,516,290	5,465
3-year average, 1917-1915.....			54,264,474	9,357
3-year average, 1916-1914.....			40,835,975	7,878
New York, Chicago & St. Louis.....	1917	570.67	2,803,673	4,922
	1916	569.44	3,967,070	6,967
	1915	567.89	1,895,989	3,338
	1914	566.12	1,580,064	2,756
3-year average, 1917-1915.....			2,890,577	5,076
3-year average, 1916-1914.....			2,474,374	4,354
Pennsylvania Co.....	1917	1,759.67	15,116,331	8,615
	1916	1,758.08	21,202,493	12,174
	1915	1,757.47	10,510,141	5,560
	1914	1,749.55	11,678,708	6,645
3-year average, 1917-1915.....			15,676,322	8,923
3-year average, 1916-1914.....			14,530,447	8,266
Pennsylvania Railroad.....	1917	4,536.18	50,192,739	11,065
	1916	4,541.04	56,949,999	12,541
	1915	4,527.81	36,372,879	8,033
	1914	4,063.54	35,782,443	8,762
3-year average, 1917-1915.....			47,638,539	10,546
3-year average, 1916-1914.....			433,035,107	9,779
Philadelphia & Reading.....	1917	1,127.27	21,925,535	19,450
	1916	1,127.27	22,499,699	19,959
	1915	1,119.75	14,416,848	12,875
	1914	1,119.75	14,656,676	13,089
3-year average, 1917-1915.....			19,614,027	17,428
3-year average, 1916-1914.....			17,191,074	15,308
Pittsburgh & Lake Erie.....	1917	2,224.56	9,297,813	41,405
	1916	224.56	11,614,177	51,730
	1915	224.91	4,802,908	21,354
	1914	224.13	6,029,201	26,900
3-year average, 1917-1915.....			8,571,633	38,159
3-year average, 1916-1914.....			7,482,095	33,325
Philadelphia, Baltimore & Washington.....	1917	717.86	5,836,855	8,130
	1916	717.14	5,816,899	8,111
	1915	717.07	3,161,192	4,408
	1914	717.12	2,890,856	4,031
3-year average, 1917-1915.....			4,938,315	6,883
3-year average, 1916-1914.....			3,956,316	5,517
Pittsburgh, Cincinnati, Chicago & St. Louis.....	1917	2,398.94	13,530,135	5,640
	1916	1,488.98	11,501,395	7,724
	1915	1,478.75	7,334,262	4,959
	1914	1,472.19	6,979,807	5,486
3-year average, 1917-1915.....			10,788,597	6,108
3-year average, 1916-1914.....			8,605,155	6,056
Recapitulation, 17 roads.....	1917	34,508.62	302,934,848	9,779
	1916	33,442.01	338,820,042	10,132
	1915	32,156.69	212,830,826	6,619
	1914	30,575.21	188,894,403	6,178
3-year average, 1917-1915.....			284,861,905	8,843
3-year average, 1916-1914.....			246,848,424	7,643

1194 GOVERNMENT CONTROL AND OPERATION OF RAILROADS.

Eastern district—Continued.

Eastern roads.	Fiscal year ending June 30—	Mileage of single track operated.	Railway operating income.	Railway operating income per mile of single track operated.
Total eastern district.....	1917 1916 1915 1914	59,253.40 58,963.34 64,805.03 62,781.42	\$418,252,568 457,141,240 300,680,798 261,826,416	\$7.09 7.73 4.60 4.17
3-year average, 1917-1915.....			392,024,865	6.44
3-year average, 1916-1914.....			339,882,818	5.32

Eastern roads.	Railway operating income.		Railway operating income per mile of single track operated.	
	3-year average, 1917-1915.	3-year average, 1916-1914.	3-year average, 1917-1915.	3-year average, 1916-1914.
Baltimore & Ohio.....	\$27,292,257	\$24,909,044	\$6,011	\$5.31
Boston & Maine.....	11,095,646	9,970,913	5,082	4.32
Central R. R. of New Jersey.....	9,559,295	9,010,993	13,996	13.29
Cleveland, Cincinnati, Chicago & St. Louis.....	11,039,994	7,543,279	4,635	3.17
Delaware & Hudson.....	7,612,855	7,778,766	8,621	4.85
Delaware, Lackawanna & Western.....	15,971,090	14,550,80	16,697	11.17
Erie R. R.....	14,443,261	15,144,06	2,468	2.49
Lehigh Valley.....	11,497,600	11,289,993	7,965	7.46
Michigan Central.....	10,766,022	8,539,06	5,906	4.79
New York Central.....	54,264,474	40,835,755	9,357	7.07
New York, Chicago & St. Louis.....	2,890,577	2,474,74	5,076	4.34
Pennsylvania Co.....	15,678,322	14,530,47	8,923	6.39
Pennsylvania R. R.....	47,838,539	43,035,07	10,546	9.79
Philadelphia & Reading.....	19,614,027	17,191,74	17,428	15.16
Pittsburgh & Lake Erie.....	8,571,633	7,482,95	38,159	35.75
Philadelphia, Baltimore & Washington.....	4,938,315	3,956,16	6,883	6.07
Pittsburgh, Cincinnati, Chicago & St. Louis.....	10,788,597	8,605,155	6,108	6.06
Recapitulation 17 roads.....	284,861,905	246,848,424	8,843	7.74
Total eastern district.....	392,024,865	339,882,818	6,484	5.32

¹ Class I roads.

² Class I, II, and III roads.

³ Class I and II roads.

Southern district.

Southern roads system.	Fiscal year ending June 30—	Mileage of single track operated.	Railway operating income.	Railway operating income per mile of single track operated.
Alabama, New Orleans & Texas Pacific Junction.....	1917 1916 1915 1914	873.78 873.78 873.78 703.48	\$6,190,490 4,806,311 3,067,929 3,807,302	\$7.06 5.47 3.52 5.42
3-year average, 1917-1915.....			4,691,243	5.36
3-year average, 1916-1914.....			3,898,847	4.68
Atlantic Coast Line.....	1917 1916 1915 1914	12,999.00 12,884.82 12,861.61 12,841.75	42,005,470 36,294,684 21,860,080 27,638,848	3.23 2.82 1.71 2.15
3-year average, 1917-1915.....			33,788,745	2.90
3-year average, 1916-1914.....			28,611,204	2.24

Southern district—Continued.

Southern roads system.	Fiscal year ending June 30	Mileage of single track operated.	Railway operating income.	Railway operating income per mile of single track operative.
Chesapeake & Ohio.....	1917	2,555.00	\$15,821,152	\$6,192
	1916	2,551.80	16,033,976	6,283
	1915	2,545.80	11,256,441	4,423
	1914	2,543.97	10,497,396	4,126
3-year average, 1917-1915.....			14,371,523	5,636
3-year average, 1916-1914.....			12,596,938	4,944
Florida & East Coast.....	1917	765.00	4,149,720	5,424
	1916	744.89	2,881,418	3,868
	1915	744.76	1,857,999	2,495
	1914	695.92	1,441,715	2,071
3-year average, 1917-1915.....			2,963,048	3,929
3-year average, 1916-1914.....			2,060,377	2,811
Illinois Central.....	1917	8,308.00	28,268,013	3,403
	1916	8,264.06	21,218,229	2,568
	1915	8,265.53	16,334,830	1,976
	1914	8,268.74	16,033,001	2,181
3-year average, 1917-1915.....			21,940,357	2,649
3-year average, 1916-1914.....			18,528,687	2,242
Norfolk & Western.....	1917	2,179.00	21,960,006	10,092
	1916	2,153.17	23,226,551	10,787
	1915	2,134.95	13,352,678	6,268
	1914	2,103.24	12,961,099	6,172
3-year average, 1917-1915.....			19,533,078	9,049
3-year average, 1916-1914.....			16,530,109	7,742
Seaboard Airline.....	1917	3,523.00	7,656,028	2,173
	1916	3,511.29	6,865,476	1,956
	1915	3,167.59	5,270,365	1,664
	1914	3,241.24	7,040,070	2,172
3-year average, 1917-1915.....			6,598,260	1,931
3-year average, 1916-1914.....			6,362,974	1,930
Southern Railway.....	1917	9,608.00	30,373,008	3,161
	1916	9,844.78	27,134,176	2,766
	1915	9,864.06	17,955,712	1,822
	1914	9,871.30	21,122,671	2,140
3-year average, 1917-1915.....			25,154,332	2,580
3-year average, 1916-1914.....			22,070,833	2,239
Decapitulation (8) systems.....	1917	40,810.78	156,462,887	3,824
	1916	40,328.61	138,463,831	3,391
	1915	40,448.08	90,999,034	2,260
	1914	40,268.64	102,602,102	2,548
3-year average, 1917-1915.....			128,638,584	3,158
3-year average, 1916-1914.....			110,351,656	2,730
Total southern district.....	1917	42,690.85	162,884,345	3,815
	1916	42,298.42	145,014,040	3,428
	1915	40,503.49	97,160,848	1,963
	1914	40,587.73	112,107,287	2,406
3-year average, 1917-1915.....			135,019,744	3,069
3-year average, 1916-1914.....			118,094,068	2,599

¹ Class I roads.² Class I, II, and III roads.³ Class I and II roads.

Southern district—Continued.

Southern roads system.	Railway operating income.		Railway operating income per mile of single track operated.	
	3-year average, 1917-1915.	3-year average, 1916-1914.	3-year average, 1917-1915.	3-year average, 1916-1914.
Alabama, New Orleans & Texas Pacific Junction.....	\$4,691,243	\$3,893,847	\$5,369	\$4.42
Atlantic Coast Line.....	33,386,745	28,611,304	2,563	2.23
Chesapeake & Ohio.....	14,371,523	12,506,438	5,636	4.94
Florida East Coast.....	2,963,046	2,060,877	3,929	2.71
Illinois Central.....	21,940,357	18,528,487	2,649	2.23
Norfolk & Western.....	19,333,078	16,530,109	9,049	7.75
Seaboard Air Line.....	6,598,260	6,392,974	1,931	1.65
Southern Railway.....	25,154,432	22,070,853	2,560	2.25
Recapitulation (8) systems.....	128,638,584	110,351,656	3,158	2.73
Total southern district.....	135,019,744	118,094,058	3,069	2.69

Western district.

Western roads system.	Fiscal year ending June 30—	Mileage of single track operated.	Railway operating income.	Railway operating income per mile of single track operated.
Atchison, Topeka & Santa Fe.....	1917 1916 1915 1914	11,274.00 11,252.11 11,118.55 10,902.64	\$51,951,671 43,779,991 36,051,400 32,103,929	\$4.1 3.86 3.24 2.94
3-year average, 1917-1915.....			43,927,687	3.92
3-year average, 1916-1914.....			37,311,773	3.36
Chicago & Northwestern.....	1917 1916 1915 1914	10,174.00 10,174.00 10,174.00 10,161.12	32,342,515 30,225,933 24,677,431 24,541,124	3.18 2.97 2.43 2.41
3-year average, 1917-1915.....			29,081,960	2.89
3-year average, 1916-1914.....			26,481,494	2.64
Chicago, Burlington & Quincy.....	1917 1916 1915 1914	9,632.00 9,635.80 9,606.97 9,532.33	41,188,434 33,815,150 24,919,508 26,440,782	4.27 3.54 2.59 2.75
3-year average, 1917-1915.....			33,307,697	3.46
3-year average, 1916-1914.....			28,391,813	2.92
Chicago, Milwaukee & St. Paul.....	1917 1916 1915 1914	10,455.00 10,361.93 10,264.43 10,219.15	30,060,870 31,368,904 24,757,853 26,830,429	2.87 3.02 2.43 2.62
3-year average, 1917-1915.....			28,728,543	2.77
3-year average, 1916-1914.....			27,651,729	2.66
Chicago & Alton.....	1917 1916 1915 1914	1,062.00 1,062.00 1,062.00 1,033.48	5,092,812 4,147,140 2,660,583 1,557,588	4.81 3.94 2.53 1.50
3-year average, 1917-1915.....			3,966,645	3.71
3-year average, 1916-1914.....			2,788,437	2.65
Great Northern.....	1917 1916 1915 1914	8,288.50 8,117.51 8,125.95 7,869.05	28,959,504 32,250,667 25,699,539 24,297,990	3.49 3.97 3.16 3.07
3-year average, 1917-1915.....			28,970,033	3.54
3-year average, 1916-1914.....			27,416,165	3.34
Missouri, Kansas & Texas.....	1917 1916 1915 1914	3,865.06 3,865.06 3,865.07 3,865.07	7,610,332 5,029,972 8,584,604 7,191,570	1.99 1.31 2.22 1.86
3-year average, 1917-1915.....			7,074,969	1.83
3-year average, 1916-1914.....			6,935,832	1.79

Western district—Continued.

Western roads system.	Fiscal year ending June 30—	Mileage of single track operated.	Railway operating income.	Railway operating income per mile of single track operative.
Missouri Pacific.....	1917	7,426.50	\$20,529,628	\$2,764
	1916	7,387.52	13,189,773	1,782
	1915	7,331.34	13,068,203	1,781
	1914	7,330.83	14,109,621	1,925
3-year average, 1917-1915.....			15,592,535	2,100
3-year average, 1916-1914.....			13,452,532	1,820
Northern Pacific.....	1917	6,748.50	33,181,971	4,916
	1916	6,732.00	30,758,687	4,569
	1915	6,691.56	21,849,703	3,266
	1914	6,896.35	22,612,645	3,279
3-year average, 1917-1915.....			28,596,780	4,250
3-year average, 1916-1914.....			25,073,672	3,705
Southern Pacific.....	1917	11,043.50	60,078,257	5,442
	1916	10,941.90	47,948,967	4,383
	1915	10,473.49	35,627,331	3,403
	1914	10,572.39	37,620,033	3,559
3-year average, 1917-1915.....			47,884,852	4,409
3-year average, 1916-1914.....			40,398,777	3,782
Texas & Pacific.....	1917	1,986.00	6,363,711	3,204
	1916	1,985.27	4,432,549	2,233
	1915	1,942.32	3,268,173	1,683
	1914	1,925.85	3,636,804	1,888
3-year average, 1917-1915.....			4,688,144	2,373
3-year average, 1916-1914.....			3,779,175	1,935
Union Pacific.....	1917	7,957.00	45,223,051	5,684
	1916	8,165.66	40,804,635	4,997
	1915	8,048.64	30,168,971	3,748
	1914	7,999.63	31,742,739	3,983
3-year average, 1917-1915.....			38,732,219	4,810
3-year average, 1916-1914.....			34,238,762	4,243
Chicago, Rock Island & Pacific.....	1917	8,094.50	21,069,695	2,603
	1916	8,098.88	17,206,970	2,125
	1915	8,331.31	14,043,493	1,696
	1914	8,329.20	13,718,060	1,647
3-year average, 1917-1915.....			17,440,053	2,138
3-year average, 1916-1914.....			14,989,608	1,819
St. Louis & San Francisco.....	1917	5,219.00	16,750,685	3,209
	1916	5,232.32	13,448,303	2,568
	1915	5,842.37	11,121,906	2,082
	1914	6,291.07	10,770,389	1,712
3-year average, 1917-1915.....			13,773,632	2,620
3-year average, 1916-1914.....			11,780,200	2,121
Recapitulation, 14 systems.....	1917	103,212.50	400,403,226	3,890
	1916	103,006.96	348,405,621	3,388
	1915	102,888.00	276,489,000	2,700
	1914	102,896.16	277,173,703	2,698
3-year average, 1917-1915.....			341,785,949	3,321
3-year average, 1916-1914.....			300,689,441	2,925
Total Western District.....	1917	128,962.06	488,613,611	3,789
	1916	127,967.33	427,086,524	3,337
	1915	141,808.09	331,227,368	2,334
	1914	136,265.40	331,691,431	2,434
3-year average, 1917-1915.....			415,642,499	3,153
3-year average, 1916-1914.....			363,385,106	2,702

1 Class I roads.

2 Class I, II, and III roads.

3 Class I and II roads.

Western district—Continued.

Western roads system.	Railway operating income.		Railway operating income per mile of single track operated.	
	3-year average, 1917-1915.	3-year average, 1916-1914.	3-year average, 1917-1915.	3-year average, 1916-1914.
Atchison, Topeka & Santa Fe.....	\$43,927,687	\$37,311,773	\$3,915	\$3,389
Chicago & North Western.....	29,081,960	26,481,494	2,859	2,694
Chicago, Burlington & Quincy.....	33,307,697	28,391,813	3,460	2,952
Chicago, Milwaukee & St. Paul.....	28,728,542	27,651,729	2,770	2,657
Chicago & Alton.....	3,966,845	2,788,437	3,771	2,659
Great Northern.....	28,970,033	27,416,165	3,543	3,425
Missouri, Kansas & Texas.....	7,074,969	6,935,382	1,830	1,794
Missouri Pacific.....	15,592,535	13,452,532	2,109	1,829
Northern Pacific.....	28,506,780	25,073,672	4,250	3,785
Southern Pacific.....	47,894,852	40,398,777	4,409	3,782
Texas & Pacific.....	4,688,144	3,779,175	2,373	1,935
Union Pacific.....	38,732,219	34,238,782	4,810	4,243
Chicago, Rock Island & Pacific.....	17,440,053	14,989,508	2,138	1,819
St. Louis & San Francisco.....	13,773,632	11,780,200	2,620	2,121
Recapitulation, 14 systems.....	341,765,949	300,659,441	3,321	2,925
Total western district.....	415,642,499	363,235,106	3,153	2,792

RECAPITULATION.

Eastern district, 17 roads.....	\$284,861,905	\$246,848,424	\$8,843	\$7,643
Increase, 1917-1915 average over 1916-1914.....		38,013,481		1,209
Southern district, 9 systems.....	128,638,584	110,351,656	3,158	2,739
Increase, 1917-1915 average over 1916-1914.....		18,286,928		428
Western district, 14 systems.....	341,765,949	300,659,441	3,321	2,925
Increase, 1917-1915 average over 1916-1914.....		41,076,508		396
All districts, total above roads and systems.....	755,206,438	657,889,521	4,063	3,769
Increase, 1917-1915 average over 1916-1914.....		97,376,917		254
Total all districts, all roads.....	942,687,109	821,311,982	3,900	3,423
Increase, 1917-1915 average over 1916-1914.....		121,375,127		547

The CHAIRMAN. I would like to state that the hearings have closed. We begin this morning the argument. Those who desire to make argument must give notice now or must be prepared to go on now for the reason that the committee will give the representatives of the railroads and the representative of the Government the closing of the argument, the railroads being represented now by Mr. Thom, and Mr. Anderson representing the administration or the Government. If there are any here who desire to be heard in argument we would like you to indicate it now so that we can tell you about what time the committee can give you, looking toward the argument to be made by the principal parties in interest.

Mr. COWAN. I think I shall want to present some argument. I had hoped to hear the opening argument on behalf of the Government, and then the argument of the railroads or proponents of the bill. I thought the proponents would have the right to make the closing argument.

Senator ROBINSON. The Government is the proponent of the bill.

Mr. COWAN. I did not know whether the railroads stood as the proponents of the bill.

Senator ROBINSON. Will you make an argument, Mr. Anderson?

Commissioner ANDERSON. No, Mr. Chairman, I do not think that this committee will be greatly benefited by anything fairly called argument by me. I did not think, as I had prepared a redraft—or

rather some perfecting amendments—that the Committee would perhaps desire to hear me briefly explain the perfecting amendments.

Senator ROBINSON. It is settled that we desire to hear you close the argument; that much is settled. I want to know whether you want to open and close.

The CHAIRMAN. The idea is whether you want to make any further statement as proponent of the bill, explanatory of your amendments. You may do so, if you wish, and if not the status announced by the Chairman stands.

Senator TOWNSEND. I hope you will feel like opening and discussing your new bill, because yesterday—perhaps it was my own fault—was the first time I had seen that bill, and I would like to have you state it briefly, if you would just as soon do that now. I do not ask you to take up much time, but explain briefly what your changes are. I think it would help in the further discussion by those who follow you, too, to get at your views. I do not want to suggest anything that is not agreeable to the committee, but I would like to hear Commissioner Anderson on that new bill, briefly.

The CHAIRMAN. Mr. Anderson can decide whether or not he desires it. What the chair wishes to ascertain is whether there are any others who wish to present arguments.

Mr. PLUMB. Mr. Chairman, I do not care to repeat any argument that I have made, but I should like the opportunity for not more than 15 minutes, perhaps only 10, to reply to some points that Mr. Thom may advance, if he advances them; and without knowing what the argument of the railroads may be, I could not reply until it has been heard. But I assure you that I do not care for more time than that.

The CHAIRMAN. There are no others who desire to argue?

Senator LA FOLLETTE. Mr. Chairman, Mr. Thorne may be here. I do not know whether he will be able to reach here or not, but if he arrives before this argument closes and desires to be heard I think the committee would be very glad to hear him.

The CHAIRMAN. Of course, he would be included if he arrives before the main arguments of these two whom we have decided would close the argument. That is the understanding of the committee.

Senator LA FOLLETTE. I do not know about that. Is the decision made by the committee as to who will close the argument?

The CHAIRMAN. Yes; the committee has decided that Mr. Thom and Commissioner Anderson would be allowed to close the argument, as they represent the railroads on the one hand and the Government on the other.

Senator LA FOLLETTE. Has not the public some interest here as to the closing?

Senator ROBINSON. The assumption was that Commissioner Anderson represented the public.

Senator LA FOLLETTE. Has that matter been passed upon by the committee by vote?

The CHAIRMAN. It has not by vote.

Senator LA FOLLETTE. By a sort of acquiescence?

The CHAIRMAN. Yes; that was my idea, by a majority of them.

Senator ROBINSON. We can take a vote on it.

Senator LA FOLLETTE. I do not know that we have a quorum here.

The CHAIRMAN. We only have the decision that was arrived at quite a lengthy time ago, that five would constitute a quorum to begin any hearing. We now have six.

Senator TOWNSEND. As I understand it, Mr. Chairman, there is no disposition on the part of the committee to shut off the fact and that the time given to these people before the last two speeches are made is time for everybody to be heard. I do not care to have anything conducted as a lawsuit; all I care about is to get any views here, and who closes or who opens does not affect me at all except that I asked Commissioner Anderson to open this discussion and explain a new bill that he has put up here, and which I have not heard discussed very much. That is all I have asked for.

Commissioner ANDERSON. Mr. Chairman, may I express the hope that if Mr. Thorne comes and desires to be heard, that he be heard.

The CHAIRMAN. Certainly.

Senator LA FOLLETTE. I do not know that he will be able to get here. He was obliged to go West somewhere, I do not know exactly where; but when it was announced here that the discussion was to begin Friday, and that Friday and Saturday would be devoted to argument, I spoke to one of the gentlemen who was in his party—I did not know his name—and suggested to him that he send a message to Mr. Thorne, saying that the argument would be made upon this measure on Friday and Saturday, and that if he wished to argue he had better return at that time.

Senator Cummins afterwards spoke to me about it and said he thought that Mr. Thorne would be here for the arguments if he was able to get back, but the uncertainties of transportation at this time were such that he was not sure he would or not. So I do not know; as Senator Cummins was not here this morning, I thought I would bring it to the attention of the committee, that possibly Mr. Thorne might desire to be heard if he could get here in time.

The CHAIRMAN. Commissioner Anderson, if you desire to make some remarks explanatory of the additions or amendments to the bill, if you are ready, you can proceed now.

Commissioner ANDERSON. I am quite willing to do that at the request of the Senator, although I had not expected to go forward.

The amended bill is in substance the original bill.

Senator LA FOLLETTE. Is there a print of the amended bill?

The CHAIRMAN. You have it before you, Senator.

Commissioner ANDERSON. The changes made are in their general effect of comparatively minor importance. Many, and probably most of them, are merely perfecting verbal amendments.

Section 1 asserts exactly the same basis of three-year earnings as did the original bill, except in one particular to which I will refer in a moment. We have changed the method of expressing the net earnings from "Net railway operating income, excluding debits and credits arising from leased road rents, and miscellaneous rents," to "Annual operating income, including equipment rents, and joint facility rents." Construing the language in the light of the nomenclature of our accounting department, the two things are identical. The change is made merely as a matter of convenience in the accounting department; it need not trouble this committee.

I said that there was one change from the three-year net earnings in the basis. That change is that section 1, as now suggested, authorizes also a return at a rate to be fixed by the President on the cost of additions and improvements, less retirements made during the last six months of 1917. Reluctantly, and very reluctantly, I have concluded that that inclusion is necessary in the interest of equality of treatment for the various carriers.

It is alleged, and I suppose with approximate accuracy, that a few of the carriers in the last six months of 1917 put about \$240,000,000 additional capital into carrier facilities, on which the Government has now taken the use. If this sum had been widely or generally distributed, so that one carrier had invested in proportion about as much as another carrier, I should have been unwilling to enlarge the basis of the proposed agreement.

But if the fact is, as I suppose it to be, that that substantial investment in property now taken under Federal control for national and war purposes has been contributed by a few of the carriers, it is difficult to avoid the conclusion that something ought to be done by way of such increased return for those investing carriers as will put them on approximately the same basis as the original plan contemplated.

We took the years ending June 30, 1917, on the theory that those three years would in an approximately equal way reflect through the earnings of the carriers the real utility of the property now taken over for federal purposes. This addition goes, you see, upon the same theory that the original plan went, varying it because of that uneven investment. If the President should allow (as I should hope he would not allow) a return in excess of 5 per cent, it would add ten or perhaps twelve million dollars to the aggregate standard return—which was computed by our Bureau of Statistics, the committee will recall, at \$935,000,000,000, assuming all the carriers, big and little, were taken in.

The CHAIRMAN. You mean that between June 30 and December 28, the time at which the Government took them over, there have been certain specific additions?

Commissioner ANDERSON. Yes.

The CHAIRMAN. And that should be taken into account before the compensation is provided for?

Commissioner ANDERSON. Yes. Those investments may be determined by the I. C. C. and a return in addition to the three-year earning basis allowed at such a rate as the President may determine. That is the way the bill is now drawn.

I should hope the return would not exceed 5 per cent. Perhaps you ought to put it on a Government basis. I do not know what the President would do. Conceivably the committee might, itself, want to fix the rate of return. But, as that investment was made by comparatively few carriers, in the attempt to approximate justice I felt compelled to pay some attention to it.

Next, the method of stating that the standard return is to bear the war tax has been greatly improved in the interest of clarity. If what I put into the original draft of the bill actually meant what I intended, still a good many people did not so understand it.

Senator WATSON. To what section are you addressing yourself now?

Commissioner ANDERSON. Still to section 1. You will recall that war taxes are not assumed by the Government, but come out of the funds of the carriers, or are to be deducted from the standard return; also that war taxes, impossible of accurate computation under existing statutes, were, however, roughly estimated by the Bureau of Statistics to fall somewhere between fifty and ninety millions. You might take as a rough guess \$70,000,000 as being the war taxes which would come out of the standard returns, so far as you can compute them on data now available.

In this connection I may say a word about the power of local taxation. That question has been raised. I put into the record the opinion of the Chief Counsel of the Commission to the effect that the bill does not affect the power of the States and of other governmental divisions in which the carriers have property to tax that property as hitherto. That opinion is in print, or will shortly be in print, and is replete with citations of authorities. To my mind it demonstrates beyond reasonable cavil that Federal control is not going to affect the general power of taxation hitherto exercised by the States and subdivisions of the States.

Senator ROBINSON. Is there any reason why a specific declaration to that effect should not be embraced in the bill, that you know of?

Senator LA FOLLETTE. I think it could be embraced in the bill.

Senator ROBINSON. If the general counsel's opinion is correct, there is no reason why it should not go in.

Senator WATSON. That, of course, would not affect the status. I do not think there is much difference whether it goes in or not. It would not change the status of the legal situation.

Senator ROBINSON. If the general counsel's opinion is correct, then there is no reason why it should not go in.

Commissioner ANDERSON. "Should go in" or "not go in"?

Senator ROBINSON. I say if the general counsel's opinion is correct, to which you have referred, then there is no reason, even from his standpoint, why that should not go in.

Commissioner ANDERSON. Except possibly this: The opinion of counsel shows that if there should be some new or disproportionate taxation devised by some State, directed obviously against the Federal Treasury, that it would be unconstitutional as an attempt to tax interstate commerce or a national agency. I think the existing status ought to be safe and perfectly satisfactory. I do not apprehend, as the Director General said the other day, that any State will undertake to embarrass the Federal Treasury by levying new taxes or in any undue way during war on property or revenue which is in effect national. But I should be disposed to think that it was the safer course, if the bill as now drawn leaves unaffected the power for the kind of taxation hitherto in vogue in the States and subdivisions thereof, so to leave it; and that it is not desirable to undertake to deal in language with a situation now sufficiently clarified.

Senator UNDERWOOD. Let me ask you a question. If the Government rents a house in Maryland there is no power of the Federal Government to prevent the State of Maryland from levying taxes on that house to the extent that the State desires, is there?

Commissioner ANDERSON. I am not sure that there is not power.

Senator UNDERWOOD. Where is the power? If the Government rents the house, where is the power?

Commissioner ANDERSON. If it rents it?

Senator UNDERWOOD. Yes; if it rents the house.

Commissioner ANDERSON. I am not sure. I do not think my opinion as to that power would be worth much, offhand, Senator. The general practice, as I understand, is that the National Government never does interfere with local taxation of that kind; but I do not remember that I ever looked up carefully the question of power. There are, undoubtedly, lawyers on this committee whose opinions would be worth much more than my own.

Senator UNDERWOOD. Of course, I can see the difference in the rule where the property belongs to the Federal Government; but if the Federal Government had the power to regulate taxes in the State on property that did not belong to the Federal Government, but belonged to a citizen of the State, and if there was any power in the Federal Government to prevent that state from levying its taxes as it saw fit, would it not destroy the State government's right?

Commissioner ANDERSON. Certainly, but your proposition did not go to that extent. It may lease for a month or for 99 years.

Senator UNDERWOOD. That may be true, but it is the title that determines this question, is it not?

Commissioner ANDERSON. When you lease property you split the title in two, as between the lessor and the lessee. I do not believe—offhand without having looked at the tax cases for some time—that without the express or implied consent of the Federal Government you can levy any State tax on any property that belongs to the Federal Government.

Senator UNDERWOOD. Surely not, but it is a question of a freehold estate; a lease is not a freehold estate.

Commissioner ANDERSON. The reversion undoubtedly would not belong to the Federal Government, and the State tax on the reversion would not be a tax on Federal property, or directed to Federal revenue.

Senator UNDERWOOD. There is only one thing you have in this bill here directed to that subject, and I do not say that it is not the proper course to pursue; but on this question of taxation, the real difficulty as far as taxation is concerned, is that the Government is assuming to pay the taxes in this State out of the net earnings or gross earnings of the corporation, which, of course, cuts down the Government's net earnings. But that is only an assumption on the part of the Government, or voluntary proposal on the part of the Government. That is, if you agreed to buy a house and pay all the taxes assessed on a house in Maryland, that would be like stepping in and assuming it.

Commissioner ANDERSON. The situation is a little bit more complicated. The Government is taking possession, control, and use of a great growing business and making itself, if this bill becomes a law, responsible for what we may call a rental, calculated on the basis of net earnings, and desires to disturb just as little as possible preexisting conditions, utilizing everything that ought to be kept and utilized, and discarding only that which obstructs or is not useful.

Now, we believe that we have dealt with the matter of taxation in the bill as now drawn, so that there can be no just cause for complaint or anxiety on the part of the States or any subdivision of the States. On the other hand, we do not think that it is desirable—and none of you, I take it, think it is desirable—to use any language which would ground any inference that the National Government was going to take care of limitless or exorbitant or disproportionate new taxation levied by any State on any part thereof. You can not tell when and where you will get an irresponsible board of assessors who may think it is a good chance to curry local favor by getting money out of the Federal Treasury.

Senator UNDERWOOD. Commissioner Anderson, I do not see how it is possible for this committee to run this Government, and if the title rests in a citizen of a State, if the title to property rests in a citizen of the State, to prevent the State from levying any taxes that it desires on the citizens of its own State. The question whether the Government is renting the property does not affect the situation that I can see.

Commissioner ANDERSON. I should think it did affect the situation very much. Suppose you went out across the line and took a house for 50 years, rented it for national purposes—

Senator UNDERWOOD. But the Government has an option, if it wants to, to condemn that property—to take the title; then it is not subject to taxation at all. After the freehold passes into the hands of the Government it is not subject to taxation. But, when it wants to have it as lessee, not as an owner, it takes it with the burdens of a lessee.

Commissioner ANDERSON. I do not so understand. I suppose the State could tax the reversion and not the leasehold—except with the implied consent of the Federal Government; this, I understand, accrues in your practice here.

Senator POMERENE. What reason has arisen which makes anyone fear that either the States or any of these other subdivisions are going to tax these utilities to an excessive degree?

Commissioner ANDERSON. Why, I can not say that there is any reason except that it is well known to all of us that boards of assessors are very much prone to going along the lines of least resistance, and that they acquire much popularity in their respective communities if they get a good tax fund without making anybody feel it. Railroads have said—I do not know with what truth, because I never went into the subject critically—that they have been overtaxed. It is rather common knowledge that it is more popular to tax a big corporation than it is most other kinds of property.

Senator POMERENE. Each State government has control over its local boards, and usually does control them; and while there may have been a time when an exercise of the taxing function by the local assessor was such as you indicate, I do not think there is any reasonable ground to fear that is going to be repeated now.

Commissioner ANDERSON. Of course it is true, Senator, that the more remote the governmental power is the more people seem to cherish the delusion that there is somehow some great fund you can get at as a source of benefactions, to which they themselves do not have to contribute. We see that in the desire to get the National Government to improve our streams and harbors, to furnish build-

ings that really ought to be furnished locally. So the town wants to get something out of the State and the State wants to get something out of the Federal Government. I think that there is a danger of that kind; if you made a flat declaration which indicated that there was no implied limitation upon increased taxation upon this property, however new in kind, however disproportional in degree, I should regard it as a dangerous invitation to extend to certain communities in the country (without undertaking to name any of them), to increase taxation in the belief that they were thereby getting it out of the Federal Government.

The CHAIRMAN. Commissioner Anderson, is there any ruling by the Department of Justice as to the right of the local State Government to tax the camp sites leased to the Government for cantonment purposes?

Commissioner ANDERSON. I have not looked that up.

The CHAIRMAN. I understand there is a ruling to the effect that they are immune; that is, that they are not subject to local taxation.

Commissioner ANDERSON. Well, there is no doubt that the Federal Government can not be taxed, and that local laws can not extend to Federal property. For instance, when ex-President Taft was circuit judge out in Ohio a case arose that I had occasion to look at when I was United States attorney up in Boston. They undertook to extend the Ohio oleomargarine law into the old soldiers' home in Ohio. Judge Taft ruled that the State had no control over what should be eaten in the soldiers' home; that it was a Federal reservation; that the local police laws (and the same thing, of course, would apply to tax laws) did not there control. That distinction is sound. Here we have a new status; the Federal Government is not taking this railroad property over and becoming the sole owner of it. It is a quasi lessee of it for an unknown period.

Senator WATSON. You say that the railroad property bears the same relation to the Federal Government that the soldiers' home does?

Commissioner ANDERSON. This railroad property?

Senator WATSON. Yes, this railroad property?

Commissioner ANDERSON. No, I said it did not. I said this is a new institution; that here the Government is not taking this over and becoming the owner of it, like the soldiers' home, but is becoming a quasi lessee, so to speak, a tenant at your will of this property, with a financial relation to it of a curious and anomalous kind.

Now, the plain line, both of justice and of practical business sense, seems to me to say that the States and subdivisions thereof may continue to tax property within their respective jurisdictions in accordance with the general principles hitherto applied; but I would not offer an invitation for new taxation, in kind or degree.

Senator POMERENE. Evidently you presented Judge Payne's opinion here to this committee to persuade it that this bill as drawn does not interfere with the power of the States and of local subdivisions to tax, and you feel it is necessary to give the committee that assurance. Now, why should not this committee give that assurance to the public at large?

Commissioner ANDERSON. That is not quite accurate. In the first place it is not Judge Payne's opinion at all. It is Gov. Polk's

opinion, and he is chief counsel of the Interstate Commerce Commission.

In the second place, I had that opinion prepared at the intimation or request of the committee, because the doubt was raised here. I did not have any doubt about it myself—at the outset. I did not present it at all for the purpose of “persuading” you; I presented it as I have been trying to present everything, in the light of what I thought were clear facts and reasonably ascertained rules of law.

Senator POMERENE. I am disposed to think you are right, but I do not see any sound reason why we should not give that assurance.

Commissioner ANDERSON. I will say this, Senator: If you or a member of this committee will draw a provision relative to the taxation which is as neutral as I have tried to draw the rest of the provisions, and which does not expressly or impliedly open the door to some local body to tax the Federal Treasury, we have not the slightest objection to putting it in.

It is simply a question of working out on the safest line the results we all want to achieve. We believe that the bill as now drawn accomplishes those results. If anybody can improve it, let it be from any of us who have had to do with the drafting of this bill, to object to an improvement.

Senator ROBINSON. Would it be accomplished by simply saying that the status of railroad property taken over by the Government with respect to taxation by the various States should not be affected or altered by the taking over or by this legislation?

Commissioner ANDERSON. I think not, because you might then raise a question as to the continuance of the present status; the States might say they ought not to be prohibited from increasing taxation on the properties, provided that increase is a proportional increase. The minute you begin to draw a statute you get into difficulty. I tried it.

Senator UNDERWOOD. Ought the States to be prohibited?

Commissioner ANDERSON. I think not. I do not think the States ought to be prohibited from the same kind of taxation on their property, or from taxation increasing proportionally to any increase of taxation on other property.

Senator UNDERWOOD. They have got to be the judges of that.

Commissioner ANDERSON. They have got to be the judges of it up to the point of the Federal Government's finding that there is such discrimination against your railroad property as to make it clear that they are taxing that property because you have possession of it and not as they would have taxed it if the tax had fallen upon the income accruing in substantial part to their own citizens.

Senator UNDERWOOD. I think if we attempted to draw that discrimination and limit the power of the State to tax, we would run up against the Supreme Court decisions.

Senator TOWNSEND. I wanted to ask you, Mr. Commissioner: Do all the constitutions of the States do not prohibit unequal and disproportionate taxation?

Commissioner ANDERSON. I do not think so. We amended our constitution in Massachusetts, within a few years, and got that word “proportional” out, or modified the constitution in some fashion so that we could exempt forests, etc. We had a fight on that point there for years. How far our present constitutional

status as to taxation is typical of other States I am not competent to answer.

Senator TOWNSEND. I know you could not excessively tax railroads. We had in our State an ad valorem plan of taxation there, and we had the question thrashed out in the Supreme Court.

Commissioner ANDERSON. We have changed our constitution, at the end of a long fight, so as to give a wider latitude to the legislature. I think what we did is rather typical of what has been done in other States. We wanted to make what was formerly held a disproportional species of taxation applicable to forestry lands. We had a law taxing our growing forests as we did land; as it was construed it was doing harm, not good, preventing forest development and conservation.

To sum up, then, we believe we have done as well with that provision as you can do. If anybody can improve it in form of expression without getting upon dangerous ground, let them do it. There is, so far as I know, no difference of opinion anywhere as to the results that ought to be accomplished.

The CHAIRMAN. But the final effect of the provision as drawn gives the Federal authorities power to annul or set aside any rate or any tax that the State might see fit to impose.

Commissioner ANDERSON. No sir; I do not believe so. I do not think the Federal Government, as the bill is drawn, has any power to affect local taxation, unless that local taxation is so different in kind or degree as to be obviously an attempt to tax the Federal Treasury. That is, I think, an accurate statement.

Senator CUMMINS. Who is to determine that question?

Commissioner ANDERSON. Ultimately a court determines everything in this country, Senator.

Senator CUMMINS. No; but do you mean that under the bill the Government must go into court have the tax set aside, or do you think the Director General or the President can set it aside?

Commissioner ANDERSON. My offhand notion would be that if an excessive or probably illegal State tax were directed against any carrier while under Federal control, the Director General would have proceedings brought in the name of the particular carrier to test its validity. Perhaps it might be brought directly in the name of the United States. That is a question of procedure to which I have given no consideration. But the United States would be the real party in interest.

I pass, then, to the other provision (which you will find now on p. 6, line 17, et seq.), as to maintenance and depreciation. We had a great deal of trouble in drawing that in a form satisfactory to ourselves or to anyone else. It is now drawn in far more flexible language than formerly. We have, as the committee will observe, all through section 1, made it clear that it is simply *an authority to make an agreement*. Section 1 sets (and should go no further than setting) maximum limits for a trade that the President is authorized to make with the carrier. He can not go beyond the three-year earnings (not now interpreting "net earnings") plus a return on the six months' additional investment—deal also with war taxes as I have already described.

The provision as to maintenance and depreciation says that "All reasonable provisions for the maintenance, repair, and renewals of the property and for the creation of reserve funds therefor, and for

the depreciation thereof may be made, to the end that at the termination of such Federal control either the property shall be returned to the carrier in substantially as good repair and in substantially as complete equipment as at the beginning of Federal control or that just payment shall be made therefor."

Manifestly, as we are in wartime, it may be necessary in some instances to run down a property, because you can not get supplies, steel, cars, engines or what not. If so, there ought to be provided out of the operating revenues a reserve fund to take care of failure of upkeep. Other properties may be built up, beyond their former standard. A reasonable provision should be made that the Government, neither in the form of the so-called rental nor in the form of additions or improvements to the property, should pay disproportionately to one carrier as compared with another carrier; so as to put them on an uneven basis at the end of Federal control.

You will, therefore, see the desirability of authorizing the President to make "all reasonable provisions" to those ends. We believe that as we have that now drawn if you enact it into law, and, when the representatives of the carriers and of the Government sit down to deal with the provisions that should be made in relation to any particular carrier, that agreements may be worked out which will, with substantial or approximate accuracy, achieve what we all desire—even-handed justice.

That is, a standard return so correlated with the provisions for maintenance, repairs, and renewals, as really and ultimately to treat them all alike.

The CHAIRMAN. Do you mean to say, in making this agreement, the Government will provide for this depreciation with the railroads so that the responsibility of taking care of them will remain with the railroads?

Commissioner ANDERSON. No; I did not mean that. The direct responsibility of doing all of the operation and of maintenance will rest with the same general operative force as hitherto; as the United States must continue to carry on this transportation system—in the main—through the same personnel. But the United States will undoubtedly, through the Interstate Commerce Commission or such other agency as may be selected by the Director General, have full theoretical control over the treatment of depreciation and maintenance of the specific properties.

The CHAIRMAN. Now, the reason I asked the question was this: you provide here that the Government is to return these railroads at the time designated, in substantially the same condition that they received them. Now, in this agreement, you will make a provision in the compensation which you give these roads for a sum adequate for that purpose.

Commissioner ANDERSON. A method, rather than a sum—to interrupt you, Senator.

The CHAIRMAN. A method will involve, I presume, the money which is necessary. Now, in the administration of that, will it rest upon the Government to take care of that or, as Mr. McAdoo indicated, will it remain with the roads to take care of that?

Commissioner ANDERSON. Well, it will remain both with the Government and with the roads. What I think Mr. McAdoo intended to say, is exactly what I intend to say; that is, that the Federal

control, paramount and all inclusive in theory, will in practice be found operative mainly through the corporate machinery hitherto used. It will continue to be used. They will keep their books substantially as hitherto. Their books will reflect what they do in the way of retirements, renewals, repairs, additions, etc. They will all be dealt with; very much as though, for instance, the Interstate Commerce Commission were now to undertake to establish general rules applicable to all roads, dealing with that important subject matter. I can not see that there will be any other practical method of dealing with it than along the lines I have indicated.

Senator POMERENE. Let me ask a question, for the purpose of getting your view. Under this legislation, it is necessary to maintain these roads in the same condition that they now exist. Assume, for the sake of the argument, that they have, in fact, only been maintained to 50 per cent of the maintenance as they have been kept up heretofore. Now, how is that question to be determined? Suppose a dispute arises as to whether or not they have, in fact been maintained as heretofore?

Commissioner ANDERSON. If the power proposed to be given under section 1 is exercised, then you have an outstanding agreement, Senator, between the United States and each carrier.

Senator POMERENE. You provide a method here for determining the compensation, etc. Now, the same reason which would suggest a method of determining compensation, it seems to me, would also suggest it in determining the degree of maintenance.

Commissioner ANDERSON. You mean in the statute or in the agreement?

Senator POMERENE. In the statute. It would seem to me there should be some method adopted.

Commissioner ANDERSON. You are quite right. It is desirable; but when you undertake to draw it, you will find you will draw a code.

Senator POMERENE. But you provide compensation. Everybody concedes that that is necessary. How is it different in principle between determining a method of compensation and determining a method of fixing the degree of maintenance which is required under this bill?

Senator WATSON. I understand this is what this language attempts to do.

Senator POMERENE. I am not sure whether it does or not.

Commissioner ANDERSON. It attempts to provide for a contract; and that between the United States and the other contracting party there shall be, as nearly as possible, a method provided. But, as I pointed out the other day, the methods of dealing with depreciation and maintenance are by no manner of means uniform among the different carriers. For instance, on equipment, I found recently that railroads charge rates varying from $\frac{1}{2}$ of 1 per cent a year to 6 per cent a year. Now, I take it that the carrier who is only charging $\frac{1}{2}$ of 1 per cent a year would deny that they were proceeding on the absurd basis that their equipment will last 200 years. What they would probably contend is that, through the process of renewals and retirements, they are taking care of depreciation and maintenance; that this charging off by percentage is a rule which they do not think desirable in practical business. So you find, Senator, when you

undertake to deal with that infinitely difficult question of "upkeep of property"—which we all think we understand—when you undertake to write about it you write almost a code. You run into "obsolescence," "depreciation," "retirements," "renewals," etc.

Senator POMERENE. I recognize the extreme difficulty of coming to an adjustment on that question, if it should arise between the Government and a carrier, and it is for that reason that it seems to me we ought to provide for possibly some method whereby this can be determined; at least the machinery whereby it can be determined. Whatever differences of view there may exist in the committee, I am quite sure we will be a unit in this, that we should reduce to a minimum the chances of litigation.

Commissioner ANDERSON. If I were trying to-day to frame a typical contract between the United States and the carriers I should propose to put into each one of those contracts something to the effect that the method of depreciation and maintenance hitherto used by that particular carrier should be carried out, so far as the bookkeeping was concerned, and probably leave either to the Interstate Commerce Commission or to an arbitration tribunal any questions which might arise as to whether or not the standards heretofore defined as desirable standards of keeping up property (or for an adequate reserve fund, if it is found not desirable to spend money during Federal control), have been achieved. I do not believe in your statute you can, without getting yourself into infinite difficulties with conflicting theories, go further than we have gone here. I wrote possibly a dozen forms. A considerable part of the language in these last dozen lines should be credited to Judge Mack, who made a number of suggestions. His time and energy and skill were chiefly devoted to the question of compensation. But I think Judge Mack has made a very valuable contribution in framing the language for dealing with depreciation and maintenance—that we now have a provision for both flexible and at the same time just and adequate.

The language at the top of page 7, is an addendum; something like the provision for "further assurance," as we call it, in many leases, etc.

The President is further authorized in such agreement to make all other reasonable provisions not inconsistent with the provisions of this act or of the act of August twenty-ninth, nineteen hundred and sixteen, that he may deem necessary or proper for such Federal control or for the determination of the mutual rights and obligations of the parties to the agreement, arising from or out of such Federal control.

In other words, we have sought to protect the public interest by providing a limit beyond which the President should not go, leaving all reasonable flexibility, as to specific provisions which should go into the contract, when counsel sit down to draw the contract between the respective carriers and the United States. Nothing which is inconsistent with the legislative mandate may go in. Anything not inconsistent therewith, which is found necessary or convenient for the full expression and determination of the mutual rights and obligations, I think, we will all agree, should go in.

Lines of 8 to 17 contain a power additional to that set forth in the original section 1. Section 1 as originally drawn was intended to authorize trading agreements only with carriers which could be easily standardized on the basis of their returns to the Interstate Commerce Commission. This provision we have put in, in deference to what

we thought were the indicated views of this committee and of the House committee or in the light of the claims of the so-called short lines and the newer roads, that there ought to be a provision in section 1 authorizing the President to trade with them even though their just compensation could not be standardized. My original view, to which I largely adhere, was that as a matter of economy of administration, it was better that all the carriers whose rights could not be standardized, should have those rights determined under section 3, which provides for an original determination by referees, remitting them to the Court of Claims only after the referees' report has come in and there is disagreement.

Senator POMERENE. You have provided a method of determining compensation by referring it to a board of referees. Why ought not that same provision apply where questions arise relative to the degree of maintenance in each particular case, so that if they can not agree, it shall be referred, first, to this board of referees, and, later on, if they do not agree, to the Court of Claims?

Commissioner ANDERSON. Possibly, but I think it had better be left to go into the separate contracts. Suppose, when you come to make a contract with Carrier A, you find it has a method of depreciation and maintenance which is just and adequate and no more; there is no particular reason why you should not, in your contract, provide that property should be maintained on the methods hitherto found adequate and no more than adequate? They do not want to be upset in their business methods unless it is necessary to upset them.

Senator POMERENE. It is not proposed to do that.

Commissioner ANDERSON. If you put it into your statute, then you have laid down a flat rule for all carriers; the difficulty is that the carriers have not been hitherto moving along the line of any uniform rule. You have to deal with conditions which are different. The end to be sought by the Government is that you shall treat these carriers all alike, as far as possible. If they had been behaving all alike, when you came to make an agreement based upon previous behavior, there would be no difficulty. But the trouble is they have not been behaving alike; you must, therefore, have more flexibility when you deal with them. I worked on that problem a long while. One thought suggested was, I think, that the Interstate Commerce Commission ought to work out a detailed plan of depreciation and maintenance and make it applicable to all these carriers during Federal control. I found this would involve us in such complexities that it would destroy the effect of the bill. It was highly desirable to have this trading power on a basis that will be plainly understood; so that the great interests involved may know, except as to negligible amounts, what their rights are. This bill provides, in language almost identical with the President's contemporaneous statement, for what is called an average of three years' net earnings and for upkeep of their property. But when you come to carry that into effect with a specific carrier, you have to work with a great deal of care into your separate contracts, conditions of business, and methods hitherto variant to the highest degree. I do not believe you can safely go further. I would be glad to have somebody do it if he can.

Senator POMERENE. My suggestion is you can agree upon a plan before they come to agree, better than afterwards.

Commissioner ANDERSON. As to each specific carrier, I agree with you. If I have my way, each contract made with the big carriers will contain provisions that will put litigation beyond reasonable probability. But we could not undertake to make it more definite in a general bill. I worked on it more than on any other one provision in this bill. There are people who are not now satisfied with this provision. The most I can say is that I have discarded every other method as having more objections than this one. This is, to my mind, the least bad.

Senator POMERENE. There is no doubt it is bad enough.

Commissioner ANDERSON. It is the least bad. I am not boasting about it.

I will read the next provision—

"If the President shall find that the condition of any carrier was during all or a substantial portion of the period of three years ended June thirtieth, nineteen hundred and seventeen, because of nonoperation receivership, or other undeveloped or abnormal conditions, so exceptional as to make the basis of earnings, hereinabove provided, plainly inequitable as a fair measure of just compensation, then the President may make with the carrier such agreement for such amount as just compensation as under the circumstances of the particular case he shall find just."

I drew that with much care. It reads "during all or a substantial portion of the time because of nonoperation." That would be applicable mostly to carriers coming into existence, in whole or in substantial part (or through receiverships that really affected earnings) "or other undeveloped or abnormal conditions, so exceptional as to make the basis of earnings hereinabove provided for plainly inequitable." We do not want, certainly, to open the doors so that carriers, whose earnings are substantially standardized, rush upon the President or the Director General and say, "We are not quite like these others; we should have some special consideration."

Senator GORE. What is your description of the eligibility of those entitled to come in under this clause?

Commissioner ANDERSON. Those which, "because of nonoperation, receiverships, or other undeveloped or abnormal conditions, are so exceptional as to make the basis of earnings hereinabove provided for, plainly inequitable as a fair measure of just compensation." In those instances, the President may treat with them, using his own discretion.

Senator CUMMINS. Do you use the word "inequitable" as synonymous with "inadequate?"

Commissioner ANDERSON. I had "inapplicable," and I think somebody—I think it was Judge Payne—changed it to "inequitable." I think I prefer my own language now. That may be partly egotism and not judgment.

Senator CUMMINS. You mean there may be two cases in which the standard will give too little or too much and in either case the President may exercise his own discretion?

Commissioner ANDERSON. I mean, when you have roads, which through nonoperation, receivership, or other undeveloped or abnormal conditions—

Senator CUMMINS. That would seem to indicate that their returns were insufficient.

Senator ROBINSON. The rule is where it is plainly inequitable, as a fair measure of compensation.

Senator CUMMINS. I suppose it was to reach those cases where the standard return would not be adequate.

Commissioner ANDERSON. It must be "nonoperation, receivership, or other undeveloped or abnormal conditions." If you have a road that can not earn anything and has so demonstrated that year after year, it is not let in under this clause. This is intended to deal with the short lines that are being developed.

Senator CUMMINS. What you mean is to give the President discretion to go beyond what is indicated by the standard return for the last three years?

Senator ROBINSON. That might not have any net operating income—for instance, a road just operated three months. You could not apply the standard to that road, because, in order to do so, it would have had to be in operation for all or the greater part of the three-year period.

Senator CUMMINS. It would still be inadequate, though.

Senator ROBINSON. I do not think "inadequate" would properly describe the kind of a road that did not have any return.

Commissioner ANDERSON. You have some roads that are just being built into a new country, that had no earnings in one of the three years and but little in the next. You can not take the earnings of the 3-year period of that road as a fair valuation of that property, or as a fair compensation for that property. My idea was that all those roads should be reported on by a board of referees; that, on the basis of those reports, the President should be authorized to trade. But there was a fear expressed that, if you put those cases under section 3, there would result a litigating atmosphere harmful to credit. I thought the attitude of the committee was that the power should be vested in the President. If the committee wants that provision in, we do not object to it. But we are putting it in not because we regard it as essential to our plan of giving just compensation to the carriers, but in deference to the views of others. There is grave danger, as I fear, that you will transmute the Director General of Railroads, for war and national purposes, to the head of a big claim agency.

Senator WATSON. Suppose some railroad, because of the abnormal conditions, had very large returns—would that railroad come within the provisions of this proposition or only those that have had inadequate returns?

Commissioner ANDERSON. There is no "adequacy" or "inadequacy" about it. It is "abnormal." Do not forget that the President is not required by section 1 to trade with any one of these carriers. There may be a carrier that, during the past three years, had earnings that would far more than measure its just compensation. If such case arises, there is no compulsion on the President to take their three years' earnings and give their equivalent to that carrier as just compensation.

The CHAIRMAN. Then, this word "inapplicable" would be the word you want?

Commissioner ANDERSON. What I said just now has application to the entire scheme of section 1, and not merely to this addendum to section 1. This we put in, in deference to the apparently indicated

views. I do not mean there was any vote or expression definitely made of the committees. We drafted that with care so that if you want to put into the hands of the President the power to trade with these nonstandardizable concerns (to use a bad word) after they have been taken over, we do not object. But it will throw upon the director general an enormous burden of personal appeal—almost political appeal—which I think might well be relegated to section three, where there is a standardized method of dealing with non-standardizable properties.

Senator CUMMINS. The use of the word "abnormal" introduces the whole trouble. We had some discussion the other day with regard to normal conditions, and it was pretty difficult to reach any agreement in regard to what is normal and what is abnormal. When you come to the President's right to make any agreement that he may please, if he finds an abnormal condition, you are really giving him unlimited discretion.

Commissioner ANDERSON. It is a very large discretion, and we do not ask it. If you want to put that responsibility upon the President, we are willing. But I think I speak the minds of those who have worked most with me on this bill in saying that we do not ask it. We put it in there in deference to others' views, and not as a power which we regard as essential in the national interest. Now, I have said much more than I expected to say about section 1; I pass on, unless there is some other question.

With the rest of the bill I think I can deal briefly. Section 2 has been changed very slightly in substance. The original bill authorized a payment, pending a settlement, not exceeding 90 per cent of "the standard return." As some of the carriers can not have any standard return that was deemed too narrow. It was then suggested that there were new roads whose bond interest ought to be paid and that there should be some provision to take care of that situation. Finally we made it more flexible by providing that the President might, pending settlement, pay not exceeding 90 per cent of "an estimated just compensation," so that a hasty estimate may be made from available data by some expert, indicating somewhere near what just compensation will be; and if necessary to take care of accruing interest on bonds or other accruing liabilities, in order to keep the financial structure intact, that the President may advance not exceeding 90 per cent of that just compensation, leaving either party to recover the balance in ordinary court proceedings. That is plainly flexible enough to take care of those short lines that have bonds outstanding and whose earnings can not be standardized. There is no danger that authorizing a payment as high as 90 per cent will put a premium on litigation, because the President is not compelled to pay anything to cantankerous or unreasonable people. The provision contemplates only reasonable people.

Section 3 has been, in legal effect, not changed at all, in my view. It has been somewhat changed in form. I have changed the word "auditors" to "referees" because my New England sectionalism seemed not to command national support.

Senator ROBINSON. What is the legal effect of the language you have employed in this section 3 with respect to referees?

Commissioner ANDERSON. That is put in in deference to the fear-some view of some people who wanted to know if you could take

into account prospects and other facts which might be taken into account if you were offering a carrier for sale. You want something in indicating you are not limited simply to bookkeeping returns if you are valuing a property more or less embryonic and inchoate but may include other things. We have inserted the following:

Such boards of referees are hereby authorized to summon witnesses, require the production of papers, view properties, administer oaths, and may hold hearings in Washington and elsewhere as their duties and the convenience of the parties may require.

We put in again, in deference to fearsome suggestions, this provision:

Such cases may be heard separately or together or by classes as the Interstate Commerce Commission or any board of referees to which any such cases shall be referred may determine. Said boards shall give full hearings to such carriers and to the United States, shall consider all the facts and circumstances, and shall report as soon as practicable in each case to the President the just compensation calculated on an annual basis and otherwise in such form as to be convenient and available for such agreement as is authorized in section 1.

Senator ROBINSON. Would that language, "full hearings to such carriers and to the United States," require the shippers to be heard in these proceedings? Is it possible to deny anybody but the carriers and the United States Government the right to be heard?

Commissioner ANDERSON. Why should the shippers be heard?

Senator ROBINSON. Because they are parties in interest.

Commissioner ANDERSON. Are they any more than any other taxpayers? It does not offhand appear to me that the shipper has any more interest than any other taxpayer.

Senator ROBINSON. I want your viewpoint, for instance, whether in these proceedings here you will hear others besides the Government and the railroads. The primary question to be determined here is the basis of return for the use of the properties. You are proceeding with the theory that others are interested besides the Government and the railroads, are you not?

Commissioner ANDERSON. I can very well understand that it is perfectly proper, indeed helpful, to have these gentlemen representing shippers, who have come before you, appear before this committee; because they are good students of railroad conditions; a legislative committee has therefore very good reasons for hearing them, but you would not necessarily care to hear them on a plain issue as to how much money the Government ought to pay for the use of the properties of these railroad companies during the war. I do not see that a shipper, as such, has any special interest in that question.

Senator CUMMINS. It seems to me that there is something here in section 3 that it is desirable to call to your attention.

These proceedings can be initiated by either the President or the carriers. The proclamation was a general one and did not indicate any particular carrier had been taken over. Notices were sent out to all the carriers of a formal kind, and the Director General—and I think others—have stated that those notices did not constitute a taking over or assuming possession of the roads to which they were sent. Now I do not know that the Director General or the President have given any notice to any carrier to the effect that a particular road has been taken over or part of the system. Does not that

mean to you that we ought to provide that the President or the Director General should take some definite action and give some definite notice to a carrier so that it might know its status, and thereupon it may resort to section three? Otherwise a carrier, being in ignorance of its relation to the Government, comes in and institutes a proceeding and the Government says, "You have not been taken over." What do you think about that?

Commissioner ANDERSON. I think the answer is no, Senator. I think that as a matter of administration that will work itself out if these people will be a little patient. I had some discussion on that point last night with Judge Payne. Please have in mind that this all happened since the 28th of December; that during that period we have had an unprecedented weather condition; and that the Director and every other man who has anything to do with transportation has been devoting his entire effort and energy to get the transportation systems thawed out, both literally and figuratively. I have not the slightest doubt that all the carriers which got those notices have a right, within a reasonable time, to be notified that they are relinquished and outside of Government control, or if they have been really affected or damaged by the receipt of the notice and by a conformity to the Government's orders during that time, I think they would have their claim under section 3.

Senator CUMMINS. I am not suggesting that the Director General ought to have given the notice up to this time in view of the circumstances, nor am I suggesting that Congress should fix a time within which a notice should be given. I am only suggesting that it seems to me that if the Government intends to take a road over it should give a definite notice to that effect, and that until the notice is given every road may consider itself outside of the operation of this statute.

Commissioner ANDERSON. I do not think they should consider themselves outside. I think they must consider themselves inside if they fall within the category of the proclamation. The effect upon their rights is another thing. It is quite possible that a carrier that is very plainly included within the description of the proclamation, but has not changed its methods of administration or had its traffic affected in any degree by national control (which is very probably the case with many carriers beyond the Mississippi River), would have nothing but a theoretical right under section 3.

Senator CUMMINS. Do you mean that if the Director General gives a direction to a road concerning its traffic that the direction is, in and of itself, a notice that the Government has taken over that railroad?

Commissioner ANDERSON. If it is, in its terms, applicable to that carrier, and if such carrier is within the description of the proclamation, it seems to me that the answer is yes.

Senator CUMMINS. It would seem to me that for the benefit of the carriers they ought to know, as speedily as possible and as definitely as possible, whether the Government has entered upon the possession and control of their properties, and it ought not to be left to the inference which might arise from the fact that the Director-General has given an order relating to operation, which affects this or that property.

Senator WATSON. I think you are right about that, Senator. It occurred to me when we had the testimony here that notice had been sent to all the carriers as the evidence given by the short lines' owners indicated; that they were all taken in by reason of the order and hereafter they would be excluded as they were not included; that is, they were to be positively excluded by notice to each line that is not included, but when the Secretary was on the stand I understood him to say the mere fact that notice had been sent to the railroads did not necessarily mean that a railroad was taken over.

Senator POMERENE. He used the expression they were "constructively" taken over.

Senator WATSON. Yes, but the point is that if notice was sent to everybody, and it meant to include some and did not mean to include others, there should be something definite about what are included.

Commissioner ANDERSON. I somewhat agree with you, Senator. The proclamation describes certain kinds of carriers. I think they were all constructively taken over; that is, they all became, on the hour named, subject to the jurisdiction of the Federal Government and the orders of the President.

Senator WATSON. That resulted because of the terms of the proclamation itself, and not because of any notice sent to the railroads.

Commissioner ANDERSON. No; I think that was mere surplusage. The question arose, when the proclamation was published, as to whether or not it was necessary that anything further should be done. I was of opinion that publication in the newspapers was enough. Others were of the opinion that it was necessary to take a list of the carriers filed with the Interstate Commerce Commission and send a telegram to each one. Those notices were sent out, according to the lists in our files, by the clerks in our employ; and, as far as I know, was inclusive. I think every carrier within the proclamation became, from the hour of the proclamation, subject to Federal control. For instance, there may be some carrier up in northern Michigan having a lot of cars not being used in the winter—if that carrier were ordered to send those cars down where they were necessary, they were bound to send them down. So, any carrier in the northwest that had need for cars and wanted them from some other part of the country, a perfectly valid order could be made producing that result. As a matter of fact, the orders made affect mostly the traffic east of a line which could be drawn from Detroit down to Cincinnati. There is the seat of real trouble in this country.

Senator CUMMINS. The only trouble with that conclusion is that from the date of the proclamation all were taken over, the short lines and all, and they would have a right to appear and insist upon the compensation provided for in this act, and if we passed it as it is now the possession once taken can not be dismissed until Congress otherwise directs.

Commissioner ANDERSON. I do not think that follows, because you have expressly provided that—

Senator CUMMINS. We provided that the possession now taken shall continue until Congress otherwise acts.

Commissioner ANDERSON. Section 10 provides that—

nothing herein contained shall be construed as modifying or restricting the powers heretofore conferred upon the President to take possession and assume control of any or all systems of transportation.

The proclamation so states, and, it seems to me, it must of necessity involve the authority to relinquish. I take it that the Committee would have no doubt that the President might, if no legislation were passed, by a proclamation relinquish control of all the carriers.

Senator CUMMINS. Section 14 provides that—

the Federal control of transportation systems herein and heretofore provided for—

We assume all these roads are under Federal control—

shall continue for and during the period of the war and until Congress shall thereafter order otherwise.

Senator ROBINSON. In addition to that, section 1 defines Federal control as the act of the President in taking over, in time of war, these railroads; so that, carrying out the thought which I see you have clearly in mind, having once taken possession, that if we pass this act providing that—Federal control meaning taken over—if we provide it shall continue until Congress acts, it will provide that control shall exist until the President relinquishes them.

Commissioner ANDERSON. The power exists now to relinquish them under the act of August, 1916; and until this act is passed or some other act, taking away from the President the right to relinquish them, he would still have that power.

Senator CUMMINS. What I am particularly interested in now is in behalf of these railroads, which have a right to know what their status with the Government is, in providing some method for the Government to pursue in order to fix that status.

The CHAIRMAN. I think in view of what Mr. Anderson says, that he considers them now subject to this law, which we all agree to therefore their status should be fixed in this bill, so that they can be dealt with as factors in this railroad question.

Senator CUMMINS. A railroad has a right to know whether it is entitled to compensation or not.

The CHAIRMAN. That is true.

Senator TOWNSEND. Do you not agree with Senator Cummins and Senator Robinson that this bill, as written now, and if passed as written, that if the roads are taken over, that they can not be released until Congress acts after the war?

Commissioner ANDERSON. If you pass the bill as it now is?

The CHAIRMAN. Yes.

Commissioner ANDERSON. I am inclined to think, gentlemen, that that point is valid, and there ought to be in this bill an express provision to the effect that nothing herein shall be construed to prevent the President from relinquishing the control of any carrier during the period.

Senator TOWNSEND. Then he could relinquish them all.

Commissioner ANDERSON. Then he could relinquish them all to-day.

Senator TOWNSEND. Under section 13 it would render indefinite any act of Congress?

Commissioner ANDERSON. No, sir; I think that section 14 as it is now should be made conformably, but I want to give further con-

sideration to that point. It strikes me now that the point is valid and the bill is inadequate in that particular; that there ought to be something additional. For I think that the case will arise of certain carriers that will prefer to be in untrammelled control of their own properties and will therefore be given seasonable relinquishing notice under the power reserved in the proclamation.

Senator ROBINSON. Now, in connection with that feature of the subject, I want to call your attention to another aspect of it which has been rather growing in my mind. The discussion here and the instances by some that a fixed limitation upon the period of control should be placed in the bill, has brought this thought; in the event it should be discovered within six months that if this control is not desirable or not necessary or that it should be discontinued, why should not the Government have the power to eliminate the Federal control then?

Senator GORE. Before the war is over.

Senator ROBINSON. Or any other time it thinks it necessary.

Senator GORE. For any road?

Senator ROBINSON. As to any road, it seems to me that in putting the provision into this bill, to the effect that Federal control shall expire one year after the termination of war and not before —

Senator KELLOGG. I do not think it should be in that form—not before.

Senator GORE. Until Congress otherwise shall order.

Senator ROBINSON. Many have contended that the period shall be fixed and specific.

Senator KELLOGG. I think it should be "or any time within that time."

Senator ROBINSON. In addition to that, if the contracts are made upon the basis of a fixed period, you can not avoid the vesting of rights within that period and the determining of contracts within that period. It will be quite difficult to limit a contract which would give the Government an option which is not clearly included in the act itself. It would be right difficult to make a contract with a railroad when the act of Congress gives them broader rights in that particular. So it occurs to me, in thinking of this proposition which has just recently been called to your attention, namely, whether or not the President would have the power to relinquish any road during the period of Federal control, if this act were passed as it is now written, we ought also to think whether or not a specific provision should be put in this act which would give to him the power to relinquish control at any time he or Congress—certainly that Congress—might find it necessary to do so.

Commissioner ANDERSON. During the war?

Senator ROBINSON. Certainly. It is not every time during war that we want to take possession and control of railroads. This is the first time we have done it since the Civil War and conditions may change very materially. If some gentlemen who have appeared here in opposition to this bill are correct—if their conclusions as to the effect of this legislation are correct—nobody will want Federal control of railroads after it has been tried.

Senator WATSON. In the Civil War it did not wait until the conclusion of the war to relinquish control.

Senator ROBINSON. The point I make is that in the interest of the people of the country, we should retain control of this matter and not commit the Government to a fixed period of Federal control when it is not necessary; that is, lay upon the Government something that we are not able to get rid of.

Commissioner ANDERSON. What you are saying, Senator, would indicate, if you look at section 14 a moment, on page 17, that you are at least considering whether you should not strike out the words "for and during the period of the war and."

Senator ROBINSON. Yes, sir.

Commissioner ANDERSON. So that the first sentence will read.

That the Federal control of transportation systems herein and heretofore provided for shall continue until Congress shall thereafter order otherwise.

Senator ROBINSON. That is right.

Commissioner ANDERSON. But what you are saying also raises the question whether you now want to insert something to this effect, that nothing shall be construed to prevent the President, by due proclamation, from relinquishing the control of any carriers not found necessary during the period for national or war needs. That is the view, I think, you have.

Senator GORE. That virtually neutralizes the provision "that until Congress shall otherwise order."

Commissioner ANDERSON. I do not think it would neutralize the financial result, which is one main object of section fourteen; because the big carriers that are essential to the war needs and the stabilizing of whose securities is a vital matter of national finance now, would not, conceivably, by the President, be thrown back until Congress did act. The power reserved to the President under the suggestion Senator Robinson is thinking of would be usable in connection with some carriers that would rather control their properties than have the Government.

Senator ROBINSON. Suppose a condition arose where neither the Government nor the carrier would want to continue the status of Federal control. Why should Congress bind itself so that status can not be modified?

Commissioner ANDERSON. It may be so in certain instances. For instance one man told me recently of a line of coal cars used in connection with certain special appliances for shipping by which they were getting, I think, three times as much a day out of these coal cars as most other concerns were getting. They would get them down to tidewater and unload them almost instantly, and then get them back to the mines. He said, "Why are not these cars doing more for the Government now than they will do if you take them out of our hands?" I said that that was a question of fact for the Director. There may be certain instances where the Government will be satisfied to leave certain carriers in full possession and control of their own systems, as long as they use them in certain ways; if their earnings are not dislocated by Federal control, it may be an order of relinquishment might be made, satisfactory both to the Government and the carrier. I have yet to be convinced that that power of relinquishment ought to be taken away. I do not at the present time think it should be. I confess that, so far as concerns sections 1 and 14, this point had escaped me, Senator.

Now, the rest of section 3, I think, requires no comment.

Section 4 I call expressly to Senator Cummins's attention, for out of it has been cut that language which expressly contemplated a capitalization of surplus, an inference which was as offensive to me as it could possibly have been to the Senator from Iowa. But it does provide that there may be an increase of the standard return by a return reckoned at a reasonable rate per centum, to be fixed by the President, upon the cost of any additions and improvements, less retirements, to the property of such carrier made by such carrier, with the approval of or by the President, while such property is under Federal control.

I am bound to say, Senator Cummins, if such additions and improvements are made out of money which may come from the surplus, that a return may still be allowed upon that surplus. But in the respect in which the section met your disapproval and mine it is improved in that there is now no expressed contemplation of making a return upon surplus, as such. But the bill is still open as a matter of financial result to the charge that all that money, whether it is properly called surplus or not, is expected to be put back at the public service in some form for additions and improvements; and that the bill authorizes a return to be made on it. I know of no way of avoiding that result and yet make it an efficient bill for war finance. It is not satisfactory to me. The most I can say about that, and a lot of other things in this bill, is that it is the least unsatisfactory way I could deal with it.

Senator CUMMINS. There is one way, and that is to permit the President to take the surplus and use it in the betterment of the property, and leaving at least the question of determining whether the carriers are entitled to any return upon that value for subsequent determination.

Commissioner ANDERSON. It would be very much more satisfactory to me if that could be done; but, as a practical matter, I am of the opinion that a provision of that kind will utterly destroy the trading value of section 1.

Senator CUMMINS. Your opportunities may be better than mine, but what makes you think that the railroads will not agree to a proposal of that kind—have they said they would not agree to it?

Commissioner ANDERSON. Various counsel have said it to me. But I base my statement upon this fact: for 25 years I have been in this controversy considering the question of what should be done with surplus. That is one of the most passion-creating in this whole discussion of public utility law. A lot of carriers' representatives claim it is a sacred right, something which we have inherited from our forefathers, a right granted to them under the Constitution, and the elimination of which would make the country an unfit place in which to live.

Now, if you can get that money into use and provide a bill which will not prejudice it in the future, as I have undertaken to do by adding to the end of section 14 something to the effect that "nothing herein is to be construed as embarrassing or prejudicing the future ownership, control, or regulation of the carriers, or the methods or basis of capitalization thereof," I think we have accomplished a desirable result.

I want to say that I have a lot of pet notions that I should like to get into this bill, but if I were to undertake to get them in, I should simply promote a first-class row.

Senator CUMMINS. It seems to me that we ought to assume that the railroads will accept an offer of compensation which is just and fair and right. I never had any reason to believe otherwise. It is perfectly natural for the railroad companies, like all other property owners, to want—within fair bounds—all they can get, but we ought to offer them what we believe to be fair and right and just, and if they can not find or see their way clear to accept it, then they have the opportunity provided in other parts of the bill for determining what their compensation should be. Now, I have never been in the habit of accepting the argument of an advocate as an ultimatum. As far as that agreement is concerned, I think it would be a very unsafe and dangerous policy to pursue.

The CHAIRMAN. I call your attention to the fact that the committee, by its own action, has limited the time for the arguments. We are now hearing something in the nature of additional hearings, but I would suggest that we will either have to extend the time for the hearings or extend the time for debate, if this procedure is to go on. I merely call your attention to that because those who have prepared the arguments have prepared them in view of the limitations that the committee put upon the time in which the arguments could be made. I simply throw that out as a suggestion.

Senator CUMMINS. I am very anxious to bring the matter to a close, but I think we should all recognize that all that has been going on this morning is pure argument, and is very pertinent. We may want to eliminate the arguments, but no one can suggest that Mr. Anderson has not been making an argument which it is quite right for him to do.

The CHAIRMAN. You understand we were to limit the time and have some understanding as to the order in which they were to come, and it was just in fairness to those who wanted to make arguments that I made the suggestion I did.

Senator TOWNSEND. I agree with the Chairman, but I think that we have had nothing more illuminating than this statement Mr. Anderson has been making this morning as to the changes in the bill, and possibly his statement may be helpful to those who will make the arguments following.

Commissioner ANDERSON. I think what I am saying is, in a certain way, argumentative. I think that Senator Townsend is quite right in stating that the men who drafted this bill may illuminate the situation by explaining the changes.

I was just explaining the changes, pointing out what distance we have gone and the distances we could not go. I only repeat what I said; that this is the least unsatisfactory method of dealing with that matter, that I believe to be practicable as a measure of war finance: taking into account also that the gist of the situation is whether you can provide a trading basis which will give you, outside of court, as good results in the public interest as you would get in court. It is not now a question of what Senator Cummins or I think should be done with the surplus. There is no doubt that what we would offer the railroads would be just and adequate, but I venture to suggest a

fear, in the light of some of the decisions of the courts, whether they would accept our views as to justice and adequacy.

The CHAIRMAN. The hour of 12 o'clock, the time at which we usually adjourn, has arrived. What is the pleasure of the committee?

Senator UNDERWOOD. I move that we proceed until half past 12.

(The motion was carried.)

Commissioner ANDERSON. I think I can be very brief on the rest of the bill.

Section 6 has only slight changes. We strike out the words "excess earnings" in line 4 and change it to "operating income," simply in the interest of clarity and uniformity of expression. We strike out the words "any deficit of any carrier below such standard or ascertained return," substituting therefor "so far as necessary the amount of just compensation." This makes no change whatever in meaning.

In line 10, page 11, we have inserted after the grant of power to the President to use the revolving fund for the purchase, construction, or utilization and operation of boats, barges, tugs, and other transportation facilities, the word "canals." That is done in deference to a suggestion made in the House. The same idea involves the use, of the word "canal" after the word "inland." If you want to authorize the President to use, buy, or build canals as well as put barges on them, there is no objection on the part of the drafters of this bill.

Senator TOWNSEND. Some four or five years ago Congress unanimously passed a Senate resolution requesting the President, through any agency, to enter into negotiations with Canada for the purpose of investigating, and, if necessary, constructing a deep waterway from the Great Lakes through the St. Lawrence River. Do you know anything about that resolution?

Commissioner ANDERSON. No, sir; I have only been with the commission three months.

Senator CUMMINS. You have come to the conclusion, I take it, that it would be wise to give the President the power to purchase or construct canals?

Commissioner ANDERSON. I should suppose that there might, if this war lasts, be a possibly desirable use of that power. All I say is that I do not see any objection to granting this while you are in the business of granting very extraordinary powers for war purposes.

Senator CUMMINS. Would you have any objection to giving the President power to purchase railroads?

Commissioner ANDERSON. I should not have if I thought it was necessary for the war power. I do not think it is necessary, however.

Senator CUMMINS. It may be as necessary as to construct a canal.

Commissioner ANDERSON. I think a canal is part of the transportation system; and that he can take over any canal under the act of August, 1916. There was a suggestion made by Congressman Moore that there were certain canals—

Senator GORE. No doubt. (Laughter.)

Commissioner ANDERSON. That taking them over was not enough; that you ought to grant the power to construct them and to purchase them. All I can say is that if there is occasion to buy them there should be a grant of power covering that point. If the committee thinks there may be such occasion we have no objection to its insertion in the bill. Probably it will not be used unless it ought to be used.

The CHAIRMAN. There is this distinction, that the railroads are going concerns and a canal is not.

Senator GORE. A railroad that has not been built is not a going concern.

Senator ROBINSON. I think that is a wise observation.

Commissioner ANDERSON. Sections 7 and 8 we have not made any changes in. Section 7 is a provision for financing maturities and other capital obligations of the carriers. We do not see why it is not adequate. Section 8 is saying that the President may exercise these powers through any such agency as may be determined and draft into his service the Interstate Commerce Commission and other governmental agencies.

Section 9 requires some comment. It authorizes the President to create a compensation system and make it exclusively applicable to the employees, some 1,700,000 in number, of the carriers. I am told it meets the opposition of some of the brotherhoods. Those of us who may be called the proponents of the bill do not desire to urge it if it is not deemed beneficial or desirable. Seven years ago I thought I knew something about compensation. I have not kept up on that subject. And so when it came to drafting this part of the bill I said that some one who could give his complete and undivided attention should be obtained.

Judge Mack, who was, I think, the chief draftsman of the insurance act, was good enough to come her and put in a week of study and work. He is a most competent and conscientious draftsman. This is his work. As I understand it, the decision of the Supreme Court in the Winfield case last spring excluded the interstate carrier employees from the benefits of the State compensation acts. I do not believe they can get just treatment under the present law. My own belief is they ought to have a compensation act. My own belief is that this Congress can not now, as a part of this measure, work out in detail a just and adequate compensation act. Therefore, it seems to me that Judge Mack was right in stating that it ought to be dealt with here, as it was dealt with in the Panama Canal act; that is, authority should be given to the President to have worked out and put in operation a just compensation act. I think it is a grant to the workmen. I think it is a boon to the workmen to have in this bill a *power—not a mandate—a power* to work out a just compensation act. I am rather surprised to find that some of the representatives of the workmen do not so regard it. All I have to say about it is that it is not an essential part of the war-financing measure; and that if it is found to be open, on any valid or reasonable ground, to serious objection, we are not going now to urge it upon the employees of these carriers. We believe that sober, dispassionate, and intelligent judgment will show that under that section 9, as now redrafted, there could, and probably would, be worked out a system of enormous advantage to the employees and their families; but we do not propose to be contentious in urging our views.

Senator GORE. You leave the railroads liable for the payment!

Commissioner ANDERSON. If you strike out of the bill section 9 the situation is this: There is a Federal workmen's compensation act of 1916 now upon the statute books applicable to Federal employees, with a commission here composed of three persons—one woman and two men. Two have voted that that act now applies to railroad

employees on the theory that the railroad employees have now all become Federal employees. I am of the opinion, not binding upon anybody, that the act of September, 1916, is not applicable to railroad employees, even if they are now Federal employees. But some courts may hold otherwise. I have known some courts to err in holding views that I do not. But if such should be the holding, you would have a curious situation—1,700,000 employees entitled to compensation relief from the Federal Treasury; somewhere about 3,000 widows a year entitled to pensions under that act. But I do not believe there is a serious danger of that construction being put upon it by any court. If that is excluded from the realm of arguable error, then you have the situation that the carrier employees are entitled to the same rights and remedies, no more and no less, that they now have under the Federal employees' liability act and under such State statutes as remain after the decision of the Supreme Court last spring applicable to any employees. I repeat that any compensation these men now have for accidents is precarious, inadequate, and unadapted to the risks they carry and the risks their families carry. But I also repeat if the well-informed representatives of the masses of those employees do not want a power given to create a just and adequate compensation act applicable to carriers during Federal control and to be extended thereafter as a part of post-war legislation, we do not propose to quarrel over that point.

We are here to deal with absolutely essential necessities incident to Federal control, including finances; and to keep out of every controversial field, including those that Senator Cummins and I would like to get into.

Senator TOWNSEND. Do I read correctly, that this is a delegation of authority to the President of the United States to fix, by law, without any other standard or any standard prescribed, a compensation act?

Commissioner ANDERSON. To fix a reasonable system; that is what you did in the Panama Canal act. It is upon that authority, and with the insertion of the word "reasonable" that Judge Mack regards this as a constitutional power.

Senator TOWNSEND. That is what it does?

Commissioner ANDERSON. Yes, sir.

Senator CUMMINS. You are familiar, are you not, with the differences of opinion that arose in Congress with regard to a compensation act applicable to all employees of interstate carriers?

Commissioner ANDERSON. I read a great deal of it at the time, but I have not kept up with all the literature as to compensation during the last few years.

Senator CUMMINS. As far as I am concerned, I am in favor of a compensation instead of liability, but there was the widest difference of opinion as to whether it should be optional or compulsory, but still there was a wider difference of opinion as to the amount of compensation which should be given to employees under certain instances and in certain accidents, and it would seem to me to be rather a broad power to confer upon any man. That is my objection to it.

Senator UNDERWOOD. If the courts should hold that railroad employees continue to be employees of the railroads and not of the Government, then their interest is fixed under existing laws in the States and Federal Government—is that correct?

Commissioner ANDERSON. Yes, sir.

Senator UNDERWOOD. If the courts should hold that they have ceased to be employees of the railroads and are now employees of the Federal Government, then the courts might hold that the workmen's compensation act is applicable—it might or might not?

Commissioner ANDERSON. Possibly.

Senator UNDERWOOD. Now, if it holds that they are employees of the Federal Government, and that the workmen's compensation act does not apply, and is not applicable to their cases, then they will leave them with rights for injuries suffered, but no remedy, because there will be no provision in the courts for them to sue the Government.

Commissioner ANDERSON. Possibly that is right.

Senator UNDERWOOD. They can not sue the Government for tort.

Commissioner ANDERSON. That is true. If you hold that, for all purposes, they are Federal employees, and not employees of the separate carriers; and also say they have lost all rights as against the corporations, and that the Federal employees compensation act does not apply—they would be nearly, if not quite, remediless.

Senator UNDERWOOD. If there was a contract they might come into the Court of Claims, but if it was a tort they could not.

Commissioner ANDERSON. I think that is correct.

Senator CUMMINS. Section 11, treating carriers as the agencies of the Government, expressly provides they can bring a suit against the carriers for any such loss or damage.

Commissioner ANDERSON. But Senator Underwood's question negatived the language of section 11, as I understood it.

Senator CUMMINS. You do not doubt we could use the carriers as instrumentalities or agencies through which suits might be brought against the Government, do you?

Commissioner ANDERSON: No, sir.

Senator UNDERWOOD. I do not either. We may change this bill so as to define the status clearly, but what I was discussing is that if we do not favorably fix the status and leave it in doubt, that if the courts hold they are Federal employees and they do not come under the workmen's compensation act for tort, they have no remedy.

Commissioner ANDERSON. I think that section eleven does fix that status.

I can finish now in a moment.

To section 10, which provides a caveat against anything modifying the restrictive powers, is unchanged, except that I have added this provision:

The provisions of this act shall also apply to any carriers to which Federal control may be hereafter extended.

It may be necessary to make another proclamation taking over other systems—the Erie Canal, for instance.

Section 11 has been slightly changed, although not in intended legal effect. It now provides that—

Carriers while under Federal control shall, in so far as is not inconsistent therewith, or with the provisions of this act, or any other act applicable to such Federal control, or with any order of the President, be subject to all laws and liabilities as common carriers—

That is the way it read before. I have inserted by way of emphasis, not, in my opinion, adding anything to the legal effect—

Whether arising under statutes or common law—

it proceeds as before—

suits may be brought by and against such carriers and judgments rendered as now provided by law.

The rest of the section has been slightly changed, but not in effect.

But no process, mesne or final, shall be levied against any property under such Federal control. The President shall prescribe the means and methods for the payment, out of the operating revenues derived from such Federal control, of any judgments and the enforcement of any decrees or orders that may be rendered against the carrier arising out of any acts or omissions in the course of such Federal operation and control.

The first part of that section, gentlemen, in my opinion, makes perfectly clear that except as otherwise ordered the roads' liabilities, whether arising under statutes or under the common law, continue. That is the intent of it, still leaving the Federal control paramount within the realm in which its necessity is demonstrated.

Senator UNDERWOOD. As I understand the construction of section 11, it means that the carriers can be sued for contracts made by them or torts committed by them, but it does not give them power to sue them for contracts made by the Government or torts made by the Government.

Commissioner ANDERSON. There will be no torts or contracts made by the Government if I have in mind what I think you have. The Government is going to operate these carriers through the carrier companies and contracts will be made in the names of the carrier companies as hitherto, and torts will be continued to be committed by the carrier companies, as far as the law is concerned. If the Government is to be responsible in the end, the carrier does not care whether it is sued or not. We have given a great deal of study to that section 11.

Senator UNDERWOOD. Under that statement do you think it is necessary to have section 11 in there at all?

Commissioner ANDERSON. Yes, sir; I do, in the light of the question you raise.

Senator UNDERWOOD. The Government is merely directing the company what to do, and the company is just carrying out the orders of the Government, and they would be liable anyway.

Commissioner ANDERSON. We want to make it clear that they are ousted only to such extent as the general or special order does oust them. It seems to be perfectly obvious to us, in the interest of clarity and understanding throughout the country, that that should be made express by statute. Without the analogous provision in the proclamation, I think there would have been very great disturbance. It was particularly gratifying to me that that proclamation seemed to convey the assurance to the country that we were not creating chaos, but were simply working out a unified, coordinated, national control.

Section 12 remains unchanged. Section 13 is drafted by the Department of Justice to prevent this act from having any effect

upon cases pending, except they may be continued for final judgment upon application by the United States to the court.

Section 14 is the old section. We had some little discussion about it a few moments ago. I added, as I indicated one day in the hearings I contemplated doing, that this act "is expressly declared to be emergency legislation enacted to meet conditions growing out of war; and nothing herein is to be construed as expressing or prejudicing the future policy of the Federal Government concerning the ownership, control, or regulation of carriers or the method or basis of the capitalization thereof." That is, of course, not binding on any future Congress, but is intended to be an express declaration to the effect that everything in this bill is to be construed as neutral on all these controversial questions. This act is neither for nor against national ownership. It is for no particular kind of control nor against any particular kind of control. It stands for no theory of capitalization nor against any theory of capitalization. It is war emergency legislation.

Senator GORE. It is all absolutely neutral?

Commissioner ANDERSON. Yes, sir. These are the changes we have made, not as briefly stated as I hoped.

Senator ROBINSON. A number of us have some engagements that we feel compelled to meet. We have devoted our attention almost exclusively to this work and we think perhaps by having a very short recess to-morrow we can conclude anyway, or at least make such arrangements as necessary, and it would suit some of us very much indeed to adjourn until 10 o'clock to-morrow morning and eliminate the recess to-morrow.

Senator GORE. Is that a motion to adjourn? I want to ask the judge one question.

The CHAIRMAN. Let us settle this proposition now. Do I hear a motion that when we adjourn to-day we adjourn to 10 o'clock to-morrow, with the understanding that the recess will be but 5 minutes?

Senator ROBINSON. I make that motion.

(The motion was carried.)

Senator GORE. I wanted to get into the record your judgment as to the wisdom or unwisdom of treating the railroad business as a competitive business or as a natural monopoly.

Commissioner ANDERSON. I stated the other day (as I recall it, before this committee) that if this war had not come on, my general notion was that we ought to make the antitrust acts inapplicable to railroads and repeal the antipooling section, provide a very much larger degree of Federal control and regulation, including consolidations found consistent with the public interest, together with other measures necessary to protect both the investing public and the rate-paying public. I do not know what the conditions will be after the war. I will meet those conditions with an entirely open mind as to all aspects of the situation. I am not committed to public ownership nor am I against it.

(Whereupon, at 12.45 o'clock p. m., an adjournment was taken until to-morrow, Saturday, January 26, 1918, at 10 o'clock a. m.)

GOVERNMENT CONTROL AND OPERATION OF RAILROADS.

SATURDAY, JANUARY 26, 1918.

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D. C.

The committee met, pursuant to adjournment, at 10 o'clock a. m., Senator Ellison D. Smith, of South Carolina (chairman), presiding.

The CHAIRMAN. The committee will come to order.

I believe that the committee yesterday had agreed that we would hear from Mr. Plumb first this morning.

ADDITIONAL STATEMENT OF MR. PLUMB.

Mr. PLUMB. Mr. Chairman, I wanted to reply to some arguments that the railroad made and not repeat any of my argument before; simply to answer such arguments of Mr. Thom. Not having heard them, I could not answer them. I understand also Mr. Thom would close. I think if I might have an opportunity after he has opened, that would suit me.

The CHAIRMAN. The chairman, at least, was under the impression that we would give a limited length of time to those other than the official counsel of the roads and for the Government. But is it understood that Mr. Thom is to make an opening statement, and then later on make his concluding argument? I was not under the impression that he was to have a certain time to make his argument from the evidence presented and then to be followed by the Government. Of course, I would like to have the understanding of the committee on that point.

Senator CUMMINS. I do not think it makes much difference, Mr. Chairman. We have had a half a dozen witnesses here, including Mr. Plumb and Mr. Thorne and Mr. Cowan. They have really made arguments, and it seems to me that the logical way to proceed now would be to hear from the railroads on their argument and then have a brief one from these other people, if they would like to be heard.

Mr. PLUMB. There is nothing, Mr. Chairman, I would care to add to the argument I have already made.

Senator ROBINSON. There is no need, then, of hearing your argument now. We have heard that once.

Mr. PLUMB. You have heard that once, and the only thing was that I wanted to reply to any argument that Mr. Thom might make and which was needed.

Senator TOWNSEND. Do you want to add anything to what Mr. Anderson has said?

Mr. PLUMB. Yes. In reply to what Mr. Anderson has said, there was one suggestion I desired to make, if that should be made now.

Senator TOWNSEND. Could you not go on with that now?

Mr. PLUMB. As to section 9, I stated my position the other day. I thought, and I do not care to repeat it. I merely want to say that we appreciate the attitude of this committee and the administration in the position they have taken that the present remedies afforded are not adequate. We feel that the workmen's compensation law, the Federal compensation law also is not adequate, and we do not feel that at the present time there is either time or opportunity to prepare adequate legislation.

Senator POMERENE. You are familiar with what is known as the Sutherland bill?

Mr. PLUMB. That is the bill that did not pass, I believe?

Senator POMERENE. It did not pass.

Mr. PLUMB. Yes; some such legislation as that I apprehend will have to be provided in time.

Senator POMERENE. Does the general plan in that bill meet your approval?

Mr. PLUMB. Well, I am not familiar with that bill, Senator.

Senator TOWNSEND. You do not want section 9 left in the bill?

Mr. PLUMB. I would prefer to have section 9 stricken out of the bill at this time and later provide—let the providing of adequate remedies be taken up at a time when adequate consideration can be given to it.

Senator TOWNSEND. And say nothing about it in this bill at all!

Mr. PLUMB. Say nothing about it in this bill at all, except under section 11, to preserve to the employees all of the existing rights and remedies, just as is done to other members of the public.

Senator POMERENE. Notwithstanding that they may be different in the different States?

Mr. PLUMB. Notwithstanding they are in different States and under different remedies, but preserve our present status until a new status can be established.

Senator ROBINSON. The language of section 11 does that, unless the language of section 13 is put in, does it not?

Mr. PLUMB. Unless the language in section 9 is put in.

Senator ROBINSON. That's what I mean; yes.

Mr. PLUMB. Yes; I believe section 11 is adequate to preserve all of our rights, as it would the rights of shippers and travelers.

Senator TOWNSEND. Notwithstanding the fact that it may hold the employees of the railroads are Federal employees rather than railroad employees?

Mr. PLUMB. I do not see that would change the situation, because if we are Federal employees instead of corporate employees, then all citizens and shippers are shipping over a Federal agency and not over a corporate agency, and what would deprive us of our remedy would deprive the public of their remedy.

Senator POMERENE. As I understand this section 11, whether they would be regarded in law as Government employees or not, this section 11 defines their status with respect to the railroads on the subject of damages and rights and remedies.

The CHAIRMAN. It would not if they were construed as Government employees under section 11.

Senator POMERENE. Yes; we are preserving the same rights that they had. This section expressly provides that they shall have the same rights and remedies both for and against.

Senator TOWNSEND. I think possibly there is some doubt about that, Senator Pomerene, but I understood from Commissioner Anderson that the railroad men were not satisfied, and that is the reason I thought that Mr. Plumb representing them might wish to be heard in that part, as to that part of Commissioner Anderson's argument.

Mr. PLUMB. We prefer that nothing should be done at this time except to preserve the present status.

Senator POMERENE. When you say "we" you mean the brotherhoods?

Mr. PLUMB. I mean the brotherhoods; yes.

Senator POMERENE. Do you know the position of the other employees outside of the brotherhoods?

Mr. PLUMB. No; I do not, because the other employees outside of the brotherhoods have not taken any action to signify their position, and the brotherhoods have.

Now, as to section 14, I want to offer a suggestion on section 14. It seems to me that the provision as set forth in the amended bill is not quite adequate, and I would suggest that these words be added to what is there found:

* * * And nothing in this act contained shall be construed as in any way determining any private or public rights in railroad properties or as affording any basis upon which the extent of such private and public rights shall be hereafter ascertained and determined.

Senator POMERENE. Read that again, will you?

Mr. PLUMB (reading):

* * * And nothing in this act contained shall be construed as in any way determining any private or public rights in railroad properties or as affording any basis upon which the extent of such private and public rights shall be hereafter ascertained and determined.

The CHAIRMAN. You would offer that as a substitute for the italicized language?

Mr. PLUMB. Not as a substitute; as an addition to it.

The CHAIRMAN. As an addition?

Mr. PLUMB. The italicized language preserves the basis of regulation.

The CHAIRMAN. I see.

Mr. PLUMB. It says that it shall not in any way affect the basis of capitalization. But there are other rights, it seems to me, which are broader than that, that this provision should be made as broad as possible, and that we should declare that this act shall not in any way afford the basis for determining any rights whatsoever.

Senator CUMMINS. I suggest that you hand that amendment to the chairman.

Mr. PLUMB. Aside from that, those are all the suggestions I have to make in response to Commissioner Anderson.

Senator McLEAN. Mr. Chairman, I would like to ask this witness one question. I was not here when he made his original statement. I do not know whether he expressed any view or has any view to express with regard to the opinion of the Brotherhoods as to a time limit fixed.

Mr. PLUMB. That is fully stated in the argument I presented the other afternoon, Senator.

The CHAIRMAN. Mr. Thom, are you ready now to proceed?

Mr. THOM. Yes, sir.

The CHAIRMAN. We will hear from you now.

ARGUMENT OF ALFRED P. THOM, ESQ., IN BEHALF OF THE RAILROADS.

Mr. THOM. Mr. Chairman and gentlemen, it seems to me that the problems before this committee lie within a very narrow compass. Much has been said in respect to percentages of return, in respect to property investments, and other matters which seem to me plain, irrelevant and immaterial. This is not a rate case. Many of those who have to do with railroad matters fall into the mental railroad-rate-case habit, and it is a custom of all of us, from which I myself am by no means immune, to flood records with intricate statements which in the main do not serve to enlighten the subject with which we have to deal; and in this case, in my judgment, they have a legitimate bearing at all. The purpose of this legislation is to provide a means of compensation to the railroads which have been taken over.

Manifestly, if the legislation stands alone with power to take over the railroads and with no provision for compensation, it lacks due process of law. It is the purpose now by those who propound this legislation to supplement existing legislation in such way that the whole taken together will constitute due process of law and will afford just compensation for the use of the properties which the Government has taken.

In such a proceeding, what is the function of Congress? Has it a right to determine what the compensation ought to be? Has it a right to lay down a rule by which that compensation shall be determined? Or is its function merely of establishing the processes by which that ultimate fact shall be determined?

At the outset, then, of this matter, we are confronted with the question of what it is in the power of Congress to do, what the legislative function is in respect to this matter. I believe it to be well established by law that the legislative function in taking properties over is to determine the political policy of whether or not they shall be taken over and thereafter simply to provide the means by which the courts shall determine what the compensation ought to be for the taking.

In the case of the Monongahela Navigation Co. against the United States (148 U. S.), at page 327, the principle is thus stated—and I perhaps before reading this quotation from the case, should say that this was a case where the United States was attempting to take one of the locks in the Monongahela River, this lock having been established under the legislation of the State of Pennsylvania which conferred upon the navigation company a franchise to take tolls and to do business on this public highway. And Congress passed an act authorizing the offer to the navigation company of a fixed sum of money, and providing that if that amount of money was declined, then the United States should go into the appropriate court and institute a condemnation proceeding; in that condemnation proceeding that the court should in no wise consider and in no way make an allowance for the franchise of the navigation company. The case proceeded to judgment and was carried to the Supreme Court of the United States on the question of whether or not it was in the power of Congress to require the exclusion of the franchises of the company, or whether the entire measure of damages was a matter for the courts and not for Congress.

Now I will read the extract from the case which I started to read a moment ago:

By this legislation Congress seems to have assumed the right to determine what shall be the measure of compensation. But this is a judicial and not a legislative question. Legislation may determine what private property is needed for public purposes—that is a question of a political and legislative character; but when the taking has been ordered, then the question of compensation is judicial. It does not rest with the public, taking the property through Congress or the legislature, its representative, to say what compensation shall be paid, or even what shall be the rule of compensation. The Constitution has declared that just compensation shall be paid, and the ascertainment of that is a judicial inquiry.

And further down the page, the Supreme Court quotes with approval from a Mississippi case, which it cites. The quotation is this:

“The right of the legislature of the State, by law, to apply the property of the citizen to the public use, and then to constitute itself the judge in its own case, to determine what is the just compensation” it ought to pay therefor, or how much benefit it has conferred upon the citizen by thus taking his property without his consent, or to extinguish any part of such “compensation” by prospective conjectural advantage, or in any manner to interfere with the just powers and province of courts and juries in administering right and justice, can not for a moment be admitted or tolerated under our Constitution. If anything can be clear and undeniable, upon principles of natural justice or constitutional law, it seems that this must be so.

Thereupon the court threw aside the mandate of Congress that no allowance should be made and no consideration had and no valuation be made of the franchises of that company.

So it seems to me, Mr. Chairman, that we must accept the view that you are sitting here having required the taking of the use of these properties—you are sitting here now simply to provide the means by which there can be either an agreement in respect to what has been taken over or to establish due process of law by which compensation may be determined.

Senator UNDERWOOD. Mr. Thom, may I ask you a question at that point?

Mr. THOM. Yes.

Senator UNDERWOOD. The act of August, 1916, did not provide for due compensation. Is there any act, general act of Congress, that would validate the act of August, 1916, in that respect?

Mr. THOM. I do not think so. The only act of Congress that might be considered possibly to have that effect is the act of conferring general jurisdiction on the Court of Claims, but I have given earnest consideration as to whether or not that constitutes due process of law in this case and am thoroughly convinced that it does not.

In a word, it is held in the case of *Crozier v. Krupp*, in 224 United States, 290, that while the provision for compensation need not be at the exact moment of the taking; the means for compensation must be adapted to the nature of the case, and that in considering whether any means are adequate constant reference must be had to the nature of the case in which the compensation is to be made.

Here is a vast mass of property which it is estimated constitutes one-seventh of the national wealth and lies at the basis of the whole financial structure of this country. The method of compensation must be adapted to that situation; it must be adequate to deal effectually with values which affect and control the destinies of the whole Nation. To say to the holders of that vast mass of property, in respect to which there is an essential public need as well as a private need,

that their only remedy is to go into court and sue for damages, manifestly is to affect the stability of the whole financial fabric of the country and to throw it into confusion and to bring upon it destruction.

So that I do not for a moment consider that the remedy in the Court of Claims, standing alone, which is merely to sue the United States in that court for damages for the taking, and which will require years to carry through, and about the results of which there can be no certainty, and the confusion with respect to which would undermine the whole of our national power at this time of need for it in all its strength—such a remedy would not constitute due process of law when you have relation, as the court says we must have, to the nature of the property to be taken and the character of the transaction.

Reverting now to the line of argument which I was attempting to make, I reiterate that the legislative function has nothing to do with the question of attempting to fix compensation, and nothing to do even with the measure of compensation which may be fixed. The legislative power extends merely to determine whether or not the property should be taken in the public interest and in providing a method of voluntary adjustment or a method of due process of law by which disputed questions of compensation may be determined judicially.

I think all men must realize the necessity for that principle. If you—if any legislative body—has the power not only to take but to determine what you will pay for the taking, you constitute yourself, as said here by the Supreme Court of Mississippi, with the approval of the Supreme Court of the United States, a judge in your own case, and every principle of stability, of right and justice, will be sacrificed.

I therefore shall assume in the argument which I shall present to you that you are here simply to perform your constitutional function of supplying a means either by which there may be an agreement in respect to the value of the use which has been taken, or, if that fails, then of establishing due process of law by which the amount of compensation may be judicially determined without any effort on the part of the legislature to invade the judicial functions or attempt to set a measure or to prescribe a limitation upon what the court may do.

Senator CUMMINS. Mr. Thom, did you hear the argument made by Mr. Plumb?

Mr. THOM. Yes, sir.

Senator CUMMINS. If it is pertinent at this point, I would like to have your opinion upon his conclusions that the legislative function in taking the use of the property is practically the same as in fixing the rates for the use of the property, and that we could say that we would take this property indefinitely, the use of it, and fix a rate of return upon the interest of the railroads in the property, within the same limits and subject to the same constitutional provision that protects the railways against confiscatory rates. In other words, if 6 per cent is a fair and reasonable return upon property, that we could say there should be a return of 6 per cent upon it?

Mr. THOM. Would it be agreeable to you to wait until I reach that point, Senator, in the course of my argument?

Senator CUMMINS. Yes; I simply wanted to hear that point discussed, because it interested me very much.

Mr. THOM. I will reach that point as I proceed, but it would disturb my argument if I bring it in at this point unless it is specially desirable that I should do so.

Now, accepting the principles which I have announced, and in which I believe, the bill which the Government has brought here attempts, as I read it, to do two things, to give authority to the President within prescribed limits to make an arrangement with the carriers for the use of their property; and, failing an agreement, to provide a means by which just compensation may be judicially determined.

As I interpret the President's proclamation and explanatory memorandum he files with it, he feels a profound responsibility in the present crisis of a two-fold nature: First, to see that as the railroads have been summarily taken over by the Government in the public interest and for national purposes, their constitutional rights to just compensation shall be sacredly guarded, and, second, that the benefits anticipated from the Government control of transportation and the constant strengthening of the national power for war purposes shall not be neutralized by destructive consequences to our financial structure, which must be maintained efficiently in order to efficiently prosecute the war.

It has doubtless seemed to the President, as it has to all other thoughtful men, that financial strength in the United States is absolutely essential to the safety of the world, to deal successfully with this great world-wide war. The highest duty, then, of those who lead and who represent the Nation is to make certain that whatever is done in this great matter, which involves one-seventh of the national wealth, shall stabilize our financial strength.

The President says in his proclamation:

The director shall, as soon as may be after having assumed such possession and control, enter upon negotiations with the several companies looking to agreements for just and reasonable compensation for the possession, use, and control of their respective properties on the basis of an annual guaranteed compensation above accruing depreciation and the maintenance of their properties, equivalent, as nearly as may be, to the average of the net operating income thereof for the three-year period ending June 30, 1917, the results of such negotiations to be reported to me for such action as may be appropriate and lawful.

But nothing herein contained, expressed or implied, or hereafter done or suffered hereunder, shall be deemed in any way to impair the rights of the stockholders, bondholders, creditors, and other persons having interests in said systems of transportation or in the profits thereof, to receive just and adequate compensation for the use and control and operation of their property hereby assumed.

Now, it is manifest from this proclamation that the President had in view, first, the necessity in the public interest of taking the use of these properties, and, second, that the matter should be so dealt with as to bring confidence and assurance to the financial public and not impair the financial strength of this Nation. He emphasizes that in a memorandum which he published at the same time, and from which I read:

Investors in railway securities may rest assured that their rights and interests will be as scrupulously looked after by the Government as they could be by the directors of the several railway systems. Immediately upon the reassembling of Congress I shall recommend that definite guaranties be given, first, of course, that the railway properties shall be maintained during the period of Federal control in as good repair and in as complete equipment as when taken over by the Government, and, second, that the roads shall receive a net operating income equal in each case to the average net income of the three years preceding June 30, 1917, and I am entirely confident that the Congress will be disposed in this case, as in others, to see that justice is done and full security assured to the owners and creditors of the great systems which the Government must now use under its own direction or else suffer serious embarrassment.

The conclusion to carry out these purposes, to take the properties for war purposes, at the same time to strengthen instead of weakening the financial structure of the country has suggested the desirability of an agreement instead of litigation. It is supposed, and rightfully supposed, that litigation over one-seventh of the value of the United States will have a destructive influence on public confidence, will undermine financial strength, and will fatally weaken this Government at a time when every one of its resources should be active and strong and reliable for national purposes.

It was further desirable that the agreement should be promptly reached and that the terms offered by the Government should, in the Government's opinion, be so essentially fair, as to attract an acceptance and to insure an agreement.

Was the President's view on this subject well-founded, or was it a mistake? Here is a mass of securities variously estimated at from 17,000 millions to 20,000 millions. The President has said that these securities lie at the very heart of all investments, large and small, by individuals and by institutions. It is well known that they form the basis of the financial solvency of the great institutions of America, that not a bank, National, State or savings, and not an insurance company, fire or life, and not an institution, benevolent or business, whose solvency is not involved in the solvency and value of this great mass of securities.

The latest figures I have, being for the year 1915, show that 818 millions of these railroad securities are held by the mutual savings banks of America alone, that 32½ per cent of the entire assets of the savings banks of Connecticut are railroad securities. I am further told that the banks in this country do not dare to-day to sell out the collateral which they hold in these railroad securities in order to get the payment of the debts due them, because if their assets are leveled down to the fall of securities the result would be national insolvency. These facts, Mr. Chairman and gentlemen, seem to me to challenge the most deliberate attention on the part of you gentlemen with this responsibility upon you. What shall be done in this crisis? What shall be done in this situation? We need every cent that can be obtained from the American people to carry on this war.

Senator LA FOLLETTE. In what form were these securities to which you refer held by the banks—stocks or bonds?

Mr. THOM. Both.

Senator LA FOLLETTE. Can you state with any degree of definiteness the proportion?

Mr. THOM. No; I can not. My table shows the railroad securities.

Senator GORE. These stocks are mostly preferred stocks?

Mr. THOM. I do not know. I understand both.

Senator LA FOLLETTE. Can you present the relative proportion of stockholdings and bonds by these banks?

Mr. THOM. I will try to get that, but I do not know that I can. I happen to have this statement from the savings banks and I have given it in the way that I have it. This information was obtained for the purpose of being presented before the Newlands committee, a joint committee of the House and Senate. It is stated in the way that I am giving it to you.

Suppose in the condition which I have described that instead of certainty being introduced by your system of legislation into this

matter of railroad securities, you plunge the whole question of their value into litigation? Hundreds of railroads, each with a different case, will feel obliged to go to some tribunal which you will constitute or to which you will give jurisdiction, to have the question determined as to what shall be hereafter the status of these securities. Can you for one moment consider such a situation as that without the gravest apprehension? Would you be willing in your representative capacity to be responsible for throwing the values of all of these securities into the uncertainties and delays of litigation? Certainly the President is not willing. Certainly the President is able to see as far around this question as any man in public or private life. I am not alluding to the President as an individual, but I am alluding to the President with his opportunities for enjoying observation and for comprehensive outlook. He knows what the needs of the war are. He knows what the financial needs are. He is obliged to know, through his Secretary of the Treasury, what the financial situation of the country is.

And he apparently, from this message which he has sent to Congress, is profoundly impressed with the necessity of at once introducing certainty in respect to this vast mass of securities, and of using this incident, this great revolutionary act, the taking into possession of one-seventh of the property of the Union for war purposes and to promote the successful prosecution of the war, to utilize that, instead of permitting it to neutralize itself by the destruction of financial strength and financial value, to promote and establish the other branch of the national energy, which is the financial hand of the Government.

I do not think that any of us can contemplate without a feeling of the most serious embarrassment, and even consternation, that the taking over of these railroad companies for the purpose of strengthening the Government in mobilizing the resources of the country should have the effect of paralyzing the financial strength of the Government. What is the use of strengthening and making efficient the transportation facilities, if the Government is to be fatally smitten in respect to its financial capacity? If there is a breakdown on that ground, it will neutralize everything else that is done in the way of more efficient transportation and everything that is being done in the trenches in France.

So, gentlemen, it seems to me that we all must concede that the highest obligation resting upon anyone in respect to this matter is not to permit it, either by too long agitation, by unwise or unstatesmanlike policy in respect to it, or by destructive measures, to become a thing that will break us down in this great emergency. Then comes up a question of practical judgment which each of you is thoroughly competent to decide, and that is, What will be the relative effect upon our financial strength of, on the one hand, settling this whole matter by a quick and prompt and fair agreement, or, on the other, of plunging the whole matter into uncertainty and litigation?

If I am correct in my belief that it is to the best interests of the public that there shall be an early adjustment of this subject and this adjustment shall be by agreement, then manifestly it follows that such discretion shall be conferred upon the President as ought to bring about such an agreement, as will enable him to make an agreement, if the railroads are by any means fair in dealing with that

subject. If I am wrong in my view that the public interests will be best promoted by an agreement, then you have no difficulty, gentlemen. It is not necessary for you to be detained longer in connection with this matter. If you once determine that it is best for the country that this matter shall be settled by litigation, then send it to litigation, and you need not bother at all with any terms of negotiation. There is no constitutional necessity on you to provide for a method of agreement. If the public interest will, in your view, be best promoted by litigation, then merely pass a law which will send everybody to such a tribunal as you see fit, and let it be settled there.

We are then, in the further consideration of this question, brought face to face with the determination of that question. Is it best, in the opinion of the Congress, that there shall be litigation and litigation only, or is it best that there shall be a fair means provided by which litigation may be avoided?

As I have said, if litigation be best for the public, then you need not delay a moment longer. It is easy for anyone of the great lawyers on this committee to draw at once a constitutional provision for a court to determine this question, and you can send us there but if, on the other hand, your opinion is, as I have argued to you your opinion should be, that the great national interest at this moment calls for an early and prompt and fair agreement, then let us relegate the question of litigation to the background and consider what ought to be the range and the discretion of the President in dealing with this question.

There is going to be a profound responsibility on somebody as to the advice which he will give in respect to whether or not anything that is offered shall be accepted by the railroads. It may be, in part, a responsibility that will rest on me. I want to ask you gentlemen of this committee to place yourselves frankly in my position or in the position of any other man who shall be called upon to advise on this subject, and to say, under the circumstances that I shall narrate, what your advice would be to your client under those circumstances. If you will consent to leave for a moment your legislative attitude and transform yourself into a conscientious lawyer, with the duty of advising his client on this great and far-reaching question, and will try to answer in your mind as to what advice you would be compelled to give in respect to the various problems which are presented, I believe that we will get some illumination as to what ought to be the attitude of Congress in respect to it.

I am arguing, you will bear in mind, that it is in the public interest that there should be an agreement. Now, certain terms are to be offered. The question will be presented to the owners of each railroad and the responsible counsel as to whether the terms which are offered shall be accepted. I ask you gentlemen to consider now, as I detail this problem, what advice you would give to your clients if you had the obligation to advise them.

The first proposition which I will ask you to consider is this: Would it be to the public interest that an offer of adjustment by the Government which is manifestly inadequate and destructive should be accepted by the railroads? Suppose Congress were to ask these carriers, or ask you, to cut your values in two and take half? Would it be to the public interest that that should be done? Would there be any patriotic obligation on the part of those owners to accept such

a proposition? Would they promote the public welfare by accepting and agreeing to a basis of settlement on half of what it ought to be, or one-third, or as a matter of gift or donation? Would it be to the public interest? When we remember that these securities lie at the base of the credit of the financial institutions of this country; when in the adjustment of the distribution of wealth, they have come to be the foundation and support of those who have financial strength, can any man conclude that it will be wise or well or patriotic for those values to be reduced by agreement or by surrender to such an extent that the whole financial fabric of the country would be undermined?

Suppose the savings banks, to which I have alluded, were willing to surrender the whole of their holdings? Suppose the savings banks of Connecticut were willing to cancel one-third of their assets? What would be the effect upon the strength of this Nation, upon the financial strength of this Nation, resulting from the cancellation and disappearance of this great body of securities? Would you be able to float a Government loan with the foundation of your financial institutions undermined by a voluntary cancellation of this whole body of holdings? I think there can be no two opinions that that much of the Nation's strength should not be dislocated and destroyed; or, if you will have it another way, that the present holdings should not at this juncture be so distributed as to create financial chaos and financial imbecility or incapacity.

If that be so, then there rests no obligation upon either the conscientious lawyer or the conscientious and patriotic holder of these securities to make other than what would be considered, and what ought to be considered, and what in the public judgment will be considered, a fair and equitable agreement with the Government.

No mere sacrifice of these holdings, no reduction of them in such way that they weaken the financial structures and undermine the financial foundations, could be in the public interest.

Now, what ought to be the basis? I am speaking now merely of principle. I am not speaking of amounts. What ought to be the basis which any conscientious lawyer can advise in favor of if there is less than that which every conscientious lawyer must advise against, in respect to making this arrangement? The principle is, as it seems to me, that there should be paid to the owners of these properties what the Constitution requires, and that is a fair equivalent of the value of the use which is taken.

Now, what, in our giving our advice, and in you giving your advice to your client—I mean you being now clothed with responsibility as to advising the owners of these properties—with what situation will you be confronted? If that principle should be taken as a fair value of the use, you would have this: There is but one precedent in the civilized world, but one other great nation has done what you are doing, and in that case the value of the use was taken and agreed to be the demonstrated value of the use in the hands of the owners. I am not now concerned with periods; I am not now concerned with amounts. I am concerned merely with principles. You would have the precedent of England, which is the only existing precedent in the world, that the value of the use which the Government must have is the demonstrated value of the use in the hands of the owners.

In the next place, you have the recommendation of the President of the United States that the fair way of dealing with this subject is to ascertain what the demonstrated value of this use is in the hands of the owners, and to pay that. That comes from the executive representative of the American Nation.

You would have that fact in your mind when you come to advise your client.

In the third place, you would have the recommendation made to you and to the country by the Secretary of the Treasury that that is a fair principle of compensation. You would have that fact in your mind when you came to advise your client.

In the fourth place, you would have the authority of repeated decisions of the Supreme Court of the United States and the supreme courts of the various States to justify that as a just measure of compensation.

I wish to read now, again, from the Monongahela Navigation Co. case (148 U. S.), at page 328:

How shall just compensation for this lock and dam be determined? What does the only equivalent therefor demand? The value of the property, generally speaking, is determined by its productiveness—the profits which its use brings to the owner. Various elements enter into this matter of value. Among them we may notice these: Natural richness of the soil as between two neighboring tracts—one may be fertile and the other barren: the one so situated as to be susceptible of easy use, the other requiring much labor and large expense to make the fertility available. Neighborhood to the centers of business and population largely affects values. For that property which is near the center of a large city may command high rent, while property of the same character remote therefrom is wanted by but few, and commands but a small rental. Demand for the use is another factor. The commerce on the Monongahela River, as appears from the testimony offered, is great, and the demand for the use of this lock and dam. And precisely similar property in a stream where commerce is light would naturally be of less value, for the demand for the use would be less. The value, therefore, is not determined by the mere cost of construction, but more by what the completed structure brings in the way of earnings to its owner. For each separate use of one's property by others the owner is entitled to a reasonable compensation, and the number and amount of such uses determine the productiveness of the earnings of the property, and, therefore, largely its value. So that if this property, belonging to the Monongahela Co., is rightfully where it is, the company may just as well demand from everyone making use of it a compensation; and to take that property from it, deprives it of the aggregate amount of such compensation which otherwise it would continue to receive.

Senator WATSON. I think we are more or less familiar with that decision. What was the date?

Mr. THOM. 1892.

There are certain principles that I want to read from it to base my further argument upon. [Reading:]

What amount of compensation for each separate use of any particular property may be charged is sometimes fixed by the statute which gives authority for the creation of the property; sometimes determined by what it is reasonably worth; and sometimes if it is purely private property, devoted only to private uses, the matter rests arbitrarily with the will of the owner. In this case, it being property devoted to a public use, the amount of compensation was subject to the determination of the State of Pennsylvania, the State which authorized the creation of the property. The prices which may be exacted under this legislative grant of authority are the tolls, and these tolls, in the nature of the case, must enter into and largely determine the matter of value.

I wish to refer also to the case of *Cleveland v. Backus* (154 U. S. 445). This was a taxation case. The court said:

The rule of property taxation is that the value of the property is the basis of taxation. It does not mean a tax upon the earnings which the property makes, nor for the privilege of using the property, but rests solely upon the value. *But the value of property*

results from the use to which it is put, and varies with the profitableness of that use, present and prospective, actual and anticipated. There is no pecuniary value outside of that which results from that use. The amount and profitable character of such use determine the value.

Senator UNDERWOOD. Your argument leads to the proposition that the Government having established tolls on these railroads at this time, that the court fixing the value has determined the earning capacity of the property based upon the present toll system?

Mr. THOM. Yes, sir.

I refer also to the case of the Northern Pacific Railway Co. v. North American Telegraph Co., 230 Federal Reporter, 347.

Now, where real property about to be taken by condemnation has no market value, the amount of rent or of income it has produced and is producing and is capable of producing, and the opinions of men who have had experience in dealing in it and have knowledge of its value, are competent and material evidence to determine what is just compensation for its taking; in other words, what damages will be inflicted by that taking.

Senator CUMMINS. Was the question of the reasonableness of the tolls for the use of the lock and dam raised in the Monongahela case?

Mr. THOM. No, Senator. I am coming to that part of my argument to show that it could not have been raised in that legislative proceeding.

Senator CUMMINS. Do you understand from that Monongahela case that the State of Pennsylvania would have the right to determine what the Government should charge for the use of the lock and dam after it acquired it?

Mr. THOM. Oh, no; I do not so understand.

Senator CUMMINS. One more question, and then I shall not bother you. Suppose the Interstate Commerce Commission, on the 29th day of December, 1917, had reduced the rates of the railroads in this country 15 per cent; would that reduction be taken into account in determining the value of the property on the 31st day of December?

Mr. THOM. That was the 28th of December that it was taken over. I have it in mind to deal with those problems as I go on. Of course I can not very well answer those questions in a word, but I have got them to refer to in the course of my argument as I proceed.

I want also to refer to the case of Johnson v. the United States, in Second Court of Claims, 391, and Vincent v. New York, New Haven & Hartford Railroad Co. (77 Conn., 431, 441); Doremus v. City of Paterson (73 N. J. Eq., 474), as carrying out the same views.

Now, with those authorities as to what is the value of the use, showing that the demonstrated earning capacity of the property in the hands of its owner is accepted in the courts, is indorsed by the precedent of England, is approved by the President of the United States, and by the Secretary of the Treasury as being a proper measure, would any of you gentlemen advise a client to surrender that as a basis? Would you think that, under those circumstances, with the inherent reasonableness of it, when the Government takes the use of the property it must pay its reasonable and demonstrated earning capacity, rental value, or whatever you choose to call it? Would you advise your client to surrender that principle and to accept some other novel and unsustained measure of value? What would you do?

I might just as well come at once to the consideration of the question which has been asked me by Senator Cummins. Is the

conclusion for which I have been arguing, affected by the power of the Government under which it is to regulate commerce to reduce the earning capacity of these carriers, a substantial reason for coming to some other conclusion? At the outset of the discussion of this question I want to call your attention to the fact that Congress did not reduce those rates at the time of the taking and that the value of this use is, under the authorities, to be as of the time of the taking.

I read from Nichols on Eminent Domain. I think it is section 436. I see there is no citation of it:

The value of real estate is by no means constant, and before compensation can be intelligently assessed for the taking of lands by eminent domain, a point of time must be fixed as of which the property is to be valued; and it is the value at that time when the owner is entitled to receive, even if the value of the land rises or falls before the money is actually paid to him. Upon this proposition all are agreed, but there is a great diversity of opinion as to just when that point of time occurs. It was said by Chief Justice Shaw in an early Massachusetts case:

"The true rule would be, as in the case of other purchases, that the price is due and ought to be paid, at the moment the purchase is made when credit is not specially agreed on and if a *pie poudre* court could be called on the instant and on the spot. The true rule of justice for the public would be to pay the compensation with one hand whilst they apply the axe with the other; and this rule is departed from only because some time is necessary, by the forms of law, to conduct the inquiry; and this delay must be compensated by interest. But in other respects the damages must be ascertained upon the same rule, as they would have been on the day of the taking."

In States in which the taking is effected by an administrative order, leaving the compensation to be subsequently ascertained by judicial proceeding, there is a difficulty in the application of this rule; and damages are assessed as of the date of the taking.

Now, we have to consider what was the situation on the 28th day of December, 1917. There had been no action of Congress or any deputy of Congress in reducing rates as of that time. The situation crystallized itself then, and we must look at the conditions and the earning capacity as they were on the date of the taking, to determine what is just compensation. We are not left to conjecture as to what the future is to bring forth; we are tied up by the principles and by the command of the law to determine that compensation as of the date when the taking occurred under the circumstances as they then existed.

Senator CUMMINS. Do you claim that if the railroads of this country had been operated at a loss for the year 1917 that we could take the roads without paying anything for them?

Mr. THOM. No; I do not.

I am speaking of the demonstrated earning capacity of those roads as a minimum at which they can be taken. The inquiry may be fairly made, here is a capacity on the part of the Government to regulate rates. Must not the value at the time of the taking be determined by the possibility of the exercise thereafter of this legislative power to reduce rates? Must we not admit that possibility that Congress might thereafter exercise the power and that the value at the time of the taking is reduced by that possibility? That, I think, is as strong as the case can be put by those gentlemen who think that there may be something in that proposition.

Let us revert again to the proposition that the value must be fixed as of the time of the taking and that if there is an increase in value thereafter, if you increase your rates, while under Government control, we are not entitled to have that increase. If we are

to be held to the possibility that Congress may decrease the rate afterward and thereby reduce our values, we are entitled also to the possibility that Congress might increase our rates and give us the increase. There need be no such restricted consideration of this subject as ties Congress down to a destructive attitude as to this proposition and to consider it all the time from the standpoint of reduction of their value. Congress has just as well the right now to increase these rates as it has to decrease them; and if it increases them now, would we be entitled to the additional earning capacity which your action in increasing the rates might attach to them, or must we be relegated to the sounder proposition that our road and the value of its use must be determined as of the time of the taking of the property and your actual increasing or decreasing of the value is a matter with which we have no concern. I think it is fair to argue that there is just as much prospect of an increase of existing rates as there is of a decrease.

Senator CUMMINS. I do not want to interrupt you, but I want to clearly understand you. I agree to the proposition that the value of property must be of the date at which the Government takes it, but there are certain railroads, several of them, which had no earnings, no profits, in 1917. Others had profits. Now, is it your proposition that as to those which had no profits during the year, we must take some other basis for ascertaining the value of the use, but as to those roads which had profit, we must take the profit as the basis of value. I do not quite understand your proposition.

Mr. THOM. Senator, let us see about that. Here are two warehouses down on Pennsylvania Avenue. One of them is rented and has been for years. We know what its demonstrated earning capacity is. The other right by its side has just been finished and has not been rented and has no demonstrated earning capacity. Would not the judgment at once of every intelligent man be that those two cases would have to be dealt with on different principles, and that where we have a satisfactory demonstrated value of a use in the hands of the owner, we are justified in accepting that; and where we have not, we must go to some other means of determining what the value is? If that be so as to two warehouses, it is equally so as to two railroads.

Senator CUMMINS. Then your proposition is where there are no profits we must go to some other basis in order to ascertain the value; where there are profits, we must accept them as the basis of value? Supposing the case of the railroad; instead of two, let us say three. One pays nothing, another 2 per cent on a certain sum of money, and another 10 per cent. What rule would you apply to those three classes?

Mr. THOM. The rule I would apply would be this: If the 2 per cent had been earned long enough, or had been in force long enough to make it thoroughly representative of the earning capacity of that second warehouse, I would give it 2 per cent. That is what I would do. I think that is the proper rule, but mind you, there might be elements of value of which the owner is deprived when property is taken that are not fairly represented in the earnings. The value of the use must always be at least as much as the demonstrated earning capacity—at least that much. It may be more, but it

must be at least that much, and when you get to another class of property or another unit of property, where their earning capacity is not distinctly demonstrated, or where it can be shown to the contrary it is not fairly representative of the value of the use, then you have the opportunity, of course, of bringing forward other considerations which would bear on that value.

Senator UNDERWOOD. Is not the basis of finding a just compensation that the court—and I understand you are trying to work on your premise on the basis of the court's working—that the court looks to all the facts and conditions surrounding the case and that there is no fixed or binding rule to determine it?

Mr. THOM. That is right.

Senator UNDERWOOD. Therefore, if we were to fix a binding rule we would be varying from what the court would do.

Mr. THOM. Undoubtedly.

I am making the same argument that I would make to a court to sustain the proposition, that where there is a fairly demonstrated earning capacity that is the minimum of the value of that use.

Gentlemen, I was trying to show when this colloquy interrupted the line of my remarks that you could not, with any safety, attempt to depart from the conditions at the time of the taking on a summary of what might be done with respect to an increase or decrease in earning capacity by law. One gentleman might say, "Well, let us have a reduction of these rates." Another man might say, "I am in favor of an increase in these rates, if these properties had remained in the hands of the owners." Can any man say before the determination of the question which would happen? But if any man can say, why would he be justified in saying under present conditions?

Here there has been for more than 30 years Government regulation of these carriers. That Government regulation has varied in degree. It started with a little strictness; it has constantly increased in strictness, and for 10 years the Government has had practically the rate-making power. In that time it is safe and fair to assume that in 49 commissions which have passed upon these questions practically every charge of these carriers has been subjected to government scrutiny and has been made the subject of governmental limitation and control.

Therefore, when we find the earning capacity of these carriers, we find it legalized by the limitation which the Government itself has placed upon the amounts of those earnings. We find that every dollar which goes into the treasuries of these carriers goes in there by the commission of substantive and affirmative law. We find that their earning capacity has been sanctioned by a policy which has been stable in the National Government for 10 years. No question of illegality can attach to the earnings which they have made.

We find that the Interstate Commerce Commission, which is the regulating body as to interstate rates, has itself reported to Congress in its 1916 report, as follows:

All rates, fares, and charges have been open to complaint for a period of more than 10 years, within which the commission had power to fix the future maximum rates. For a period of more than six years all proposed increased rates have been subjected to protest and suspension before becoming effective. Obviously there should be some time when as to the past the general level of the rates and the relationship of rates should be fixed as reasonable. We are convinced that the best interests of the public, of the system of governmental regulation of rates, and of the railroads will

served by the enactment of a statute which as of a specified date fixes the existing interstate rates, fares, classifications, rules, regulations, and charges as just and reasonable for the past, and which provides that after that date no charge therein may be made except upon order of the commission.

Now, you have been furnished with that situation in respect to rates. With that degree of affirmative control over the earning capacity of these carriers, if we are going to guess at the future, my guess would be that there is more prospect of an increase in rates than there is of a decrease. Are you going to give us that increase? If you are not, how can you charge us with any decrease that the policy of Congress may cause to be enforced? Moreover, I ask your attention to this fact: You are engaged in taking this property. You have this history behind you of an opportunity to exercise your power during all these years to control these earnings. You have them controlled in this recommendation from your deputy in respect to the amount of these rates.

Suppose in the act of taking over you were to attempt to influence the standard of the compensation by a reduction of rates, would you not thereby be attempting to put upon the court a measure of its judicial power in respect to determining this compensation? Would you not at once enter the class of that Congress which has attempted to say that no compensation should be given for a franchise and bind the court in determining what the compensation would be? In other words, are you able and can you justify or can any man justify the crippling of a horse in order to buy him? It seems to me, therefore, that we must, in dealing fairly with this question, accept the status as of the 28th day of December, 1917, when these properties were taken, as the status which will control the court in determining what the value of this use is.

The court, I repeat, will not enter the field of speculation to determine whether Congress is going to increase these rates or may decrease them. It will take the facts; it will take the act of your deputy, which has fixed the reasonableness of these rates through a series of years; it will take what they say about a reasonable level at last having been reached; and it will interpret, and should interpret, any effort on the part of Congress to fix compensation by a reduction of the rates in the process of taking as an effort to put a limit upon the judicial discretion as to determining what the value is.

Much has been said here as to determining what the value is. Much has been said here about some properties that show a very large percentage of earnings and about other properties that show a very small percentage of earnings and the wonder in some gentlemen's minds is whether or not you can not say the earnings of road A are too great; to guarantee them would be to guarantee an unreasonable amount, and therefore the legislative power ought to be exercised to take off a part of those earnings in order to arrive at a reasonable measure of what the compensation should be. I know of no principle by which a legislative body can say that any earning at lawful and reasonable rates is too great. Our understanding is that the only way that a legislative body has to control the question of earnings is through the rates.

Senator GORE. Then you could never reduce it.

Mr. THOM. Oh, yes, sir; you could reduce the rates; that is what I say. You can reach the earning capacity of a property through the

rates. You can not allow a rate that is reasonable and say the result is too great and take a part off of the top.

Senator GORE. You have to operate on the rates.

Mr. THOM. You have to operate on the rates. That follows from a variety of considerations.

The first and controlling one seems to me to be that the franchises of these properties are to charge a reasonable rate for the service. That is the franchise. Under the authority of the Monongahela case, you can not take away that franchise or any part of it. You can not substitute some other franchise for that franchise. You can not substitute a franchise which says that you are entitled to an aggregate return of a certain amount. The franchise is to charge tolls for your services. The foundation of governmental right is to protect each one of these charges.

In the case of *Lake Shore Railway Company v. Smith* (173 U. S. 698), it is held:

The authority to legislate in regard to rates comes from the power to prevent extortion or unreasonable charges or exactions by common carriers or others exercising a calling and using their property in a manner in which the public have an interest.

You must simply control the use of the franchise right to a toll. You can not control the results of these rates unless you go back and control the rate over again.

Justice Brewer, in the case of *Cotting v. Kansas City Stockyards* (183 U. S., 79), at page 95, enunciates the principle which I am about to read, and in the case of *L. & N. Railroad v. Eubank* (184 U. S., 79), at page 46, says that the same rule applies to railroads.

Senator GORE. What railroad is that?

Mr. THOM. The Louisville & Nashville, in the second case that I mentioned.

I said Justice Brewer. I did not say the Supreme Court of the United States.

In the *Kansas City Stock Yards* case, Justice Brewer delivered this wonderful opinion, as I think, and the majority of the court agreed with him, and he decided the case on one point, that of classification. They did not find it necessary to pass on the second, but still Justice Brewer delivered the opinion of the court. I am reading from that opinion, which is the authority that I mention:

Pursuing this thought, we add that the State's regulation of his charges is not to be measured by the aggregate of his profits, determined by the volume of business, but by the question whether any particular charge to an individual dealing with him is, considering the service rendered, an unreasonable exaction. In other words, if he has a thousand transactions a day and his charges in each case are but a reasonable compensation for the benefits received by the party dealing with him, such charges do not become unreasonable because by reason of the multitude the aggregate of his profits is large. The question is not how much he makes out of his volume of business, but whether in each particular transaction the charge is an unreasonable transaction for the service rendered. He has a right to do business. He has a right to charge for each particular service that which is reasonable compensation therefor, and the legislature may not deny him such reasonable compensation and may not interfere simply because out of the multitude of his transactions the amount of his profits is large. Such was the rule of the common law even in respect to those engaged in quasi public service independent of legislative action. In any action to recover for an excessive charge prior to all legislative action, whoever knew of an inquiry as to the amount of the total profits of the party making the charge?

Senator GORE. Was that in 183?

Mr. THOM. Yes, sir.

Senator WATSON. The reference was 184.

Mr. THOM. I read from 183. I said that Justice Brewer, in one hundred and eighty-fourth, in the Eubank case, said this same rule applied to railroads. The Supreme Court, in the case of Transportation Co. v. Parkersburg, 107 United States, 699-700, had this to say in respect to charges for wharfage, and this is referred to by Justice Brewer as authority for the proposition I have just read to you, from 183 United States:

"It is an undoubted rule of universal application that wharfage for the use of all public wharves must be reasonable. But then the question arises, by what law is this rule established, and by what law can it be enforced? By what law is it to be decided whether the charges imposed are, or are not, extortionate? There can be but one answer to these questions. Clearly it must be by the local municipal law, at least until some superior or paramount law has been prescribed (p. 700).

It is also obvious that since a wharf is property, and wharfage is a charge or rent for its temporary use, the question whether the owner derives more or less revenue from it, or whether more or less than the cost of building and maintaining it, or what disposition he makes of such revenue can in no way concern those who make use of the wharf and are required to pay the regular charges therefor; provided, always, that the charges are reasonable and not exorbitant (p. 699).

The CHAIRMAN. May I ask you a question, Mr. Thom?

Mr. THOM. Yes, sir.

The CHAIRMAN. In citing the opinion of Justice Brewer you said that he held the principle was that the amount that the company got in the aggregate from that service rendered had nothing to do with the compensation that was paid by an individual. How would you apply that to a railroad in a sparsely settled country where the service rendered to an individual for shipping a piece of property was exactly analogous to that of a road in a thickly populated section where the same amount was charged to a shipper?

Has the Interstate Commerce Commission recognized that in the one case the road was entitled to a higher rate because the aggregate was smaller?

Mr. THOM. Not where the two roads are in competition. That would be in impossibility. I want to read from the act to regulate commerce, section 1, which says that the basis referred to by Justice Brewer and referred to by Justice Bradley in the case of 107 U. S. is the basis which has been adopted by Congress. The measure of the rate in all of them in the service. It is not the aggregate amount of the profits. In section 1 of the act to regulate commerce the language is:

All charges made for any service rendered or to be rendered in the transportation of passengers or property and for the transmission of messages by telegraph, telephone or cable, as aforesaid, or in connection therewith, shall be just and reasonable.

The standard is that the charge must be reasonable for the service, and two cases have recently gone to the Supreme Court of the United States, in both of which it is held that if the charge is less than reasonable for the service, it violates the constitutional provision against taking property without just compensation. I refer to the case of the Northern Pacific against the State of North Dakota, 236 United States, at page 585, and the case of the Norfolk & Western Railroad Co. against the State of West Virginia, the same volume, page 605. There again it is held that the measure of the rate is the service, and that it is a constitutional right of a carrier to charge a reasonable compensation for the service.

The CHAIRMAN. You do not then base it on the capital invested, but on the service.

Mr. THOM. I do not. When I get to the capital invested, and when I get to the question of a reasonable return, I am dealing with it, and I think the United States Supreme Court is dealing with it as a measure of confiscation.

Senator CUMMINS. I think there is much weight in what you have said. Growing out of that was one of the complaints against the commission, as to its attitude in the Five Per Cent Rate case in 1905 in which it abandoned the rule as to the value of the service and determined the matter upon the aggregate compensation for the money that the railroads seemed to need as a whole.

Mr. THOM. Those are matters which in the public interest may be considered, but I regard them more in the light of public interest and not the exact right of the carriers.

I read now from Judge Prouty's testimony, which he gave on May 18, 1905, before a committee of the United States Senate, when the Hepburn bill was under consideration. He said:

The railway rate is property. It is all the property that the railway has. The rest of its property is good for nothing unless it can charge a rate. Now it has always seemed to me that, when a rate was fixed, if that rate was an unreasonable rate, it deprived the railroad company of its property pro tanto. It is not necessary that you should confiscate the property of the railroad; it is not necessary that you should say that it shall not earn 3 per cent or 4 per cent. When you put in a rate which is inherently unreasonable, you have deprived that company of its rights. It is property, and the circuit court of the United States has jurisdiction under the fourteenth amendment to restrain that. * * * I have looked at these cases a great many times and I can only come to this conclusion, that the railroad company is entitled to charge a fair and reasonable rate. It is entitled under the fourteenth amendment to charge a fair and reasonable rate, and if any order of the commission, if any statute of a State legislature takes away that right, the fourteenth amendment protects the railway company.

Senator UNDERWOOD. May I ask a question?

Mr. THOM. Yes, sir.

Senator UNDERWOOD. On the question whether Congress can now change the rate and affect the value of the property, didn't the status of this railroad property change the moment it was taken over; was it not before the taking over a private property charged with a public use?

Mr. THOM. Yes; before the taking.

Senator UNDERWOOD. And after the taking, was it not an equity in private property not charged with public use, and therefore the Congress could not affect it by legislation?

Mr. THOM. I do not think it changes the status at all.

I would like to call the attention of the committee to what legitimate bearing the question of the aggregate earnings on these properties can have on a question of rates. It undoubtedly is a matter of evidence which may be submitted and which may have an influence on the determination of the question of whether a body of rates is reasonable or not; but there has never been a declaration from anyone that simply because a carrier was earning a large aggregate of profits at lawful and reasonable rates, that any legislative body could take away a part of the profit because they considered it too large, without confiscating the property itself. How does that arise? I have asked you to consider that the railroad's right franchise right—is to get this compensation through tolls. That is a right conferred upon it by the common law and by the charter of

the State that brought it into being. It gives the right to charge tolls for service.

Let us look at the matter practically. Here are railroads in a given territory. Take the eastern territory. The question comes up as to what is a reasonable rate for the service to be rendered by these railroads. The Government can not fix one rate for one railroad and another rate for another in competitive territory. From the nature of the case they must fix one as a reasonable rate—one reasonable rate for the service.

In dealing with that question in the Eastern Rate case, the Interstate Commerce Commission took three roads, which it considered to be fairly representative of the railroads in the eastern division. It took, as I remember it, the Pennsylvania, the New York Central, and the Baltimore & Ohio.

"Let us examine them and let us see what the rates ought to be," is what is said. Let us see what the rates ought to be in this great competitive territory lying between Chicago and New York and the Atlantic seaboard. They then fixed what they said was a reasonable rate. That was a reasonable rate for the service. That was a rate which each carrier in that traffic territory could charge legally.

Now, suppose one of those railroads did twice as much services as another one at that same rate; that it performed twice the number of units of service at a rate that was legal. It might be that the road that performed the service had better grades, had easier curvatures, better yards and terminals, and could perform the service at a cheaper rate. It, therefore, is inevitable that there would be an inequality in the earnings of the roads in that territory. One of them that did a comparatively small business would have a small aggregate net earning. Another one that did a great volume of business at the same rate might have a very large net result from its operations. That is not by any means confined to the railroads. The Government has fixed the price of wheat. A small farmer who can raise a very few bushels of wheat has small earnings. The great farmer on the prairies who plants thousands of acres and who raises, perhaps, millions of bushels at the same rate, has very large earnings.

A department store in the little village where I was born may have a very small patronage, and the result of its business may be vastly different from what Wanamaker's is in the city of New York.

A manufacturing industry with small capacity, being obliged to sell its products at the same price and in competition with the larger manufacturing establishments, may have small returns, where the capable manufacturing establishment that can turn out thousands of units has a large earning capacity. The Government fixes the price of wheat and the price of coal to all alike.

Senator CUMMINS. Not the price of coal.

Mr. THOM. Perhaps not. I am very sorry if everybody has to pay the price for coal that I do.

Take, however, the price of wheat. It is alike to all. It leaves it open to the man of vast resources to produce a great number of units of wheat and to make large earnings, and it results in the man of smaller productive capacity having much smaller earnings.

Having fixed the price, having determined what the service is worth to the man who gets it, and having determined what that man should pay for it, here comes along a carrier that does a hundred times the volume of business of another carrier. The conclu-

sion of law is not that you must take away from that carrier what it has earned by the vastly increased public service, but you must scrutinize the dealings with each one of the patrons to see that each one of the patrons gets his right to get the service at a reasonable price. Inequality of earnings is inherent in the method by which the law has regulated the manner in which this business is to be carried on. It has required competitive conditions. It has required that you must submit to having your rates fixed, and if you are efficient, if you are efficiently serving a great productive or a great consuming community and do a vast deal of number of public service, you are not required to do it at a lower price than the law permits, and everything you make out of it the law says is your own.

Let us take another case to illustrate where this doctrine will carry us. Take two roads that cost exactly the same amount of money, that have exactly the same operating conditions, and that serve communities of different productive powers. One of those railroads carries twice the business that the other does. It does it at the same rate and at the same cost, and it has doubled the amount of net earnings. It has 10 per cent, perhaps, where the other has 5. You may multiply it. It might have 30 per cent where the other has 5. To what is that 30 per cent due? Is it due to exorbitant charges? Is it not rather due to the performance of six times the service?

The Government comes along and says you should not have 30 per cent. We will take off five-sixths of your earnings and we will reduce you to where you have the same earnings exactly as the other one; that is, 5 per cent. That means that you will reduce the rates for the service on that larger road by five-sixths and that the patrons on the road performing the larger service shall pay one-sixth of the price that the patrons on the other road pay. Is that a fair relationship to establish between those patrons? Is that a competitive business basis for them to do business on? Ought not the business to be done on the road with great public service to offer exactly the same competitive conditions to its patrons that the road of the small public service offers to its patrons? Ought not the men on the road with small traffic be able to go to market and compete with those on the road with the large traffic?

It seems to me that if we are to arrive at a reasonable conclusion in respect to this matter, we can not make this question turn on the aggregate of the earnings. We are obliged to permit an earning capacity to greater public service. In the jealousy which has grown up in respect to railroads and to railroad earnings, it seems to me that there has been lost sight of the influence which the amount of the public service should have on the question of the earnings. In every other department of life the man who works twice as hard and performs twice the unit of service is expected to have that reflected in his earnings.

The farmer has it, the manufacturer has it, and the manufacturer of transportation, when he manufactures twice or three or four times the service for the public that another manufacturer of transportation does, ought to have that enter as an element into the question of what he may legitimately earn.

Senator CUMMINS. Would it interfere with you, Mr. Thom if I asked a question or two?

Mr. THOM. No, sir.

Senator CUMMINS. I do it simply because you are now discussing what I have always characterized as an insoluble problem in rate regulation when it is based upon competitive service.

Suppose, however, we had but one railroad and no competition at all, and for one year the railroad earned a profit of a million dollars. The next year, without any addition to the capital, it earned a profit of \$2,000,000 by reason of having increased its service. Do you say that that fact would not be taken into consideration in determining thereafter the value of the service rendered by that company to the public?

Mr. THOM. No. I have specially said that I think the volume of earnings is always a matter of evidence to go to the regulating body.

Senator CUMMINS. So that the value of the service is, after all, in the absence of competition, to be largely determined by the profit that a certain rate or body of rates may afford.

Mr. THOM. It should be determined partially by that. I would not say largely by it. I would say partially by it. I think that there might conceivably be one lawyer in the United States, and if he makes no bargain with a client, he is entitled to go into court and sue on a quantum meruit, and that would not be determined by whether that lawyer had a big practice or not. It would be determined by reference to the service. Of course, charges for similar service to other clients and the volume of his business would be, if there was one lawyer only, perhaps legitimate evidence, but it would not turn on that entirely. It is a question at last of the value of the service.

Senator CUMMINS. In that illustration, you would discard largely, if not entirely, the difference between the service which was charged with the public use and a purely private service?

Mr. THOM. There is nothing in the public service that requires it to be other than reasonably paid for. This property is private property. It is subjected to public use, and being subjected to public use it undertakes—and being subject to public use is a voluntary act—it undertakes as a matter of fact, to contract with the Government to do several things. One is to have reasonable and adequate service. The second is to perform this service for a reasonable rate, and the third is not to be guilty of any unjust discrimination. Those are the three things which a carrier undertakes to do when it subjects itself, or its property, to a public service.

Senator CUMMINS. That is familiar law.

Mr. THOM. That is the limit of it.

Senator CUMMINS. In determining what is reasonable, that introduces the whole field of dispute. According to your argument, you could determine the reasonable value of a service rendered by a railroad by regulating what it cost to transport some commodity by wagon when there were no railroads.

Mr. THOM. You have got to take into consideration the whole field. One of the subjects to be taken into consideration is the amount you can make out of the aggregate of the business.

Senator CUMMINS. Our commission has been compelled by the very necessities of the situation to make such rates or approve such rates as would afford the small property unfortunately located and with but little business an opportunity to earn something upon its investment.

Mr. THOM. They have determined, then, that that is a reasonable charge?

Senator CUMMINS. Yes, sir.

Mr. THOM. Here is another property that has three times the service of that one. Now, I do not suppose any man will deny that the fact that its earnings show three times as well would not condemn that rate or entitle the public to take off two-thirds of that earning capacity.

Senator CUMMINS. What I wanted to bring out was that this condition in which we are and in which we have attempted to control rates has compelled or led the commission into the consideration of what was necessary for the poorer and weaker and less fortunately situated railroads in order to determine the value of the service.

Mr. THOM. My view is that the commission has been led to that view and consideration on the public question as to whether that carrier ought to be sustained, and not as a right of the carrier. The right of the carrier is merely to have a reasonable rate. The public interest may require that the rate should be large enough to sustain all the carriers, but when they determine that question they determine the value of the service, weighing all the public and all the private considerations. Having done that, it does not lie in the mouth of the Government to condemn a part of the result of operation and say that it is too great and that you will take it away.

Senator CUMMINS. All that I say in regard to that is that I see no escape from the view of the commission, as heretofore taken, of the general problem; but I am still not convinced that in determining the value of the property or the value of the use of the property that some difficulty should be allowed to intervene and give to the value of the use of the property a standard which, it seems to me, it is not entitled to.

Mr. THOM. If you once admit that the service is only properly paid for by the return for it which the law attaches to it; if, for instance, there was an act of Congress which said there should be a right to charge so many cents a hundred pounds for a certain service, and a carrier performing the service did a great number of units at that rate, and its earnings were large, my mind can not accept the proposition that there is not proper title to those earnings because of the number of units of service which the carrier is able to perform.

Senator CUMMINS. My mind is open in regard to what should be done with the property that has been accumulated through that method of regulation, but I can not see that it has anything to do with the value of the use of the property if the Government takes it over.

Mr. THOM. My mind is absolutely unable to escape the conviction that if the Government has fixed a certain compensation for its service, and by reason of a great volume of service the earnings of a particular carrier are large, that those results become illegal simply by reason of their size. My mind can not accept that.

Senator GORE. You do not think there is any relation between the total amount of earnings and the total amount invested?

Mr. THOM. I think that the question of the investment has something to do with the making of the rates.

Senator GORE. You instanced a case of two competing manufacturers, but I do not think that the reasoning there would apply to a monopoly like a railroad.

Mr. THOM. I did not catch the drift of your question, Senator.

Senator GORE. You instanced the case of two competing manufacturers who might be using the same article. The tendency there is for the earnings to become somewhat of a reasonable return on the amount of capital invested, but that is not true, in fact, of a monopoly like a railroad.

Mr. THOM. I should think it would not be true to the same extent.

Would the committee be willing to adjourn at this time?

(Thereupon, at 12.45 o'clock p. m., the committee went into executive session, with the understanding that it was to meet again at 2 o'clock p. m.)

AFTER RECESS.

The CHAIRMAN. The committee will come to order. Mr. Thom you may proceed now.

Mr. THOM. Mr. Chairman and gentlemen, I have in the main so far been considering the principle of compensation.

The CHAIRMAN. Mr. Thom, will you suspend just one moment? The committee to-day decided that you would be allowed an hour additional, which I shall take from the time that you commence, and that in case you have not completed all that you desire to state at the end of that time, you may submit any statement in writing that you may wish in addition, and that there will be an hour given to Mr. Cowan, and a half hour each to three others that are named, namely, a half hour to Mr. Plumb, a half hour to Mr. Thorne, and a half hour to Mr. Anderson. I just wanted to make that statement so they would know the circumstances under which they are speaking. You may proceed.

Mr. THOM. So far, Mr. Chairman and gentlemen, I have been considering the principle of compensation. I have attempted to show to the committee that the principle of allowing, in cases where applicable, which is the great majority of cases, the ascertained value of the use in the hands of the owners of the property ought to be accepted as a fair and reasonable measure of the compensation the Government should pay. I have alluded to the fact that it is supported by the President, that it is supported by the authority of the President, by the authority of the Secretary of the Treasury, by the authority of adjudicated cases, and by reason.

Now, asking you again to consider the matter from the standpoint of your own conscientious advice to a client, I think I can with confidence put to you the question whether you would feel justified in advising a client to abandon that system of compensation thus amply sustained. It seems to me that no just principle can be suggested. I then was diverted from that line of argument into some discussion of the principles of rate making by questions of the committee, and I desire now to come back to the main line of my argument and to present the other alternatives which have been suggested to the committee as proper measures of compensation to be adopted instead of the one for which I have been speaking.

One of the suggestions is, as I recall it, that there should be allowed enough to the carriers to pay what would be considered a reasonable dividend upon their stock, and that any amount beyond that should be divided into two parts, the Government should have

one and the carrier one, with a limitation on the carrier's part that it should be used only as the Government should suggest.

And that suggestion involves the concession that the carrier does not own the amount that it earns beyond its dividend, but that that may be dealt with by an act of Congress, or that the carrier may legitimately be expected to accept it as a fair and reasonable adjustment of its rights.

On that subject I wish to present some consideration. Does the surplus stand in any such way that a conscientious lawyer would be justified in advising his client to accept the status which has been advocated here from the witness chair? What is the present state of the law in regard to ownership of the earnings of a carrier over and beyond a dividend upon its stock? I realize that the Interstate Commerce Commission has not taken any final position on the subject. Senator Cummins said a few days ago at a meeting of this committee that it had been first on one side of the question then on the other side of the question, and now on neither side. Whether that be a just conclusion or not, a just interpretation or not, of the attitude of the commission, I wish at the outside of my remarks to read what Judge Prouty said on this subject as a member of the commission, and I refer to the case of the City of Spokane against the Northern Pacific Railway Co., 15 Interstate Commerce Commission Reports, pages 415 and 416. Here is what he says:

We come now to the complainants' claim that the surplus which has been accumulated by these defendants from earnings should be first subtracted from the value of their properties in determining the amount upon which they may properly charge. The contention of counsel is that this surplus is a fund held by the railway company as trustee for the public, which this commission should in some way manage to red-tribute to the public in the establishment of just and reasonable rates. The railway is certainly an agent of the Government in the construction and operation of its property, and it is only allowed to charge for its services a reasonable compensation. Does it from this follow that the surplus of the Great Northern Railway, for example, which is said to be \$70,000,000, is held by that company in trust for the public? It does it follow, even, that the value of this property to-day should be decreased to \$70,000,000 upon the theory that the public has paid into the property that amount?

It is well understood that rates by all lines to Spokane from a given eastern destination must be the same. We have already held that in establishing a reasonable rate the strongest line should not alone be considered; the necessities of the weaker line must also be taken into account. In the application of this principle it is evident that a rate might be fixed which would pay a very moderate return by one line and a very handsome return by the other. Under the operation of these rates the Great Northern, by reason of its cheaper construction and its easier operation, might accumulate a surplus while the Northern Pacific did not. If so, could it be said that the surplus of the Great Northern had been improperly accumulated when its rates had been just and reasonable? Does the mere fact of the accumulation of a surplus by a particular road show that the rates upon that road have been excessive?

But assume that they have been. This \$70,000,000 to which the complainants refer in case of the Great Northern surplus is the result of the operations of the Manitoba and the Great Northern Cos. since the year 1880; that is, for 37 years. During all that period this surplus has been gradually accumulated and has gone into the property. Should the Government to-day take note of that surplus for the purpose either of so reducing the rates of the company that no earnings can be made upon the much of the property or with a view to in some sense turn that surplus back again into the hands of the public?

There is no absolute test of a reasonable rate, and the Government has supplied none. During all this period the excess has gone into the property, which has gradually become more valuable, and this increased value has reflected itself in the market price of the securities of that company. It is impossible to restore what has been improperly taken in the way of excessive rates to those persons from whom it has been received. The Government, under those circumstances, can not lay hold on this surplus as a fund held in trust for the public.

Now, on the same question of the status of this surplus, I wish to refer the committee to a number of authorities.

Senator ROBINSON. What was that last case that you cited?

Mr. THOM. The city of Spokane against Northern Pacific Railway Co., 15 I. C. C. Reports, pages 415 and 416.

Commissioner ANDERSON. Who wrote that?

Mr. THOM. Judge Prouty. I introduce that not as indicating the attitude of the Interstate Commerce Commission on the question, because I am aware that in a recent case the Interstate Commerce Commission has reserved the point; but I introduce it on account of the cogency of the reason made by a man of vast experience in these matters.

That property acquired out of earnings stands on no different footing than any other property, has been repeatedly held by public service commissions and State and Federal courts. In making a valuation of the gas plant for the purpose of fixing rates, the Board of Public Utilities Commissioners of New Jersey in the Passaic Gas case, 1 Public Utilities Commission of New Jersey, 433, held as follows:

If, in the past, this gas company, out of the rates exacted from consumers, had met its operating expenses and depreciation, and in addition thereto had obtained enough to pay returns to investors and to build an actual structure used in the business, would this structure aforesaid be the lawful property of the company? The answer, it seems to us, must be in the affirmative. If the company had paid out, in addition to other payments to investors, dividends equal to the cost of building this structure and then had issued additional stock in value equal to the cost of the structure in order to repossess itself of the money required to build it, there can be no doubt that the structure built out of the proceeds of the additional securities thus sold would be the lawful property of the company. It would be none the less the company's lawful property if built out of current earnings without the issue of additional securities.

I refer also to the case of *Charlesworth v. Omro Electric Light Co.*, Public Utilities Report of Wisconsin, 1915 B, page 1. That commission said:

It is quite clear, also, that property paid for out of earnings is as much the property of the respondent as though paid for by new capital. Such earnings might have been first distributed among the stockholders as dividends and later returned for investment.

I refer also to *Stennerson* against Great Northern Railroad, 69 Minnesota, 353. In that case the carriers contended that the rates fixed by the State commission were confiscatory. The court held that the question was to be determined by considering the return under such rates on the cost of reproducing the present property, which property, as the court specifically found, included additions and betterments made out of earnings. See also the case of *Bryner* against *Butler Water Co.*, 179 Pa. State, 231; the case of *Garden City* against the *Garden City Telephone, Light & Manufacturing Co.*, 236 Federal Reporter, 693, the syllabus of which is as follows:

In determining the validity of an ordinance fixing rates to be charged by an electric company, claimed to be unconstitutional as confiscatory, the capital on which the company is entitled to a fair return is the reasonable value at the time of the property being used in the service, and it is immaterial that such property was in part acquired or paid for out of previous earnings of the business, or whether or not previous rates were reasonable or excessive.

Now, in conclusion, I cite the Minnesota rate case, in 230 United States. There is no mention in that case of this question of the

status of surplus, but the value which the court considered in that case in coming to its conclusion did include the surplus. My point is this: I know that the question has been held open in the case of 212 United States, which has been cited. I have referred you to these authorities as to what the decisions are in other courts and tribunals than the Supreme Court. Now, I put the question—and before putting that question I will say that the most that could be claimed on that question is that the law is unsettled about it. No one can claim that it is settled, that there is no right to these surplus earnings. I put this question: With the authorities which I have here produced showing that there is an ownership in this surplus in the company, that it had been accumulated under rates that are legal, and that it belongs to the company as much as any of its earnings, can any conscientious lawyer advise his client in this emergency legislation to surrender its title to that surplus? Can you legitimately ask that a matter of such supreme importance, so far-reaching in its effect, shall be determined adversely by the advice of counsel, by accepting the agreement which assigned to this surplus a status which had never been given to it by the courts? Is it a fair thing in legislation of this sort to seek to put upon a part of the earnings of these properties a character which has never been conceded to them and which is denied in this line of decisions? Bear in mind what we are trying to do and what we have argued for, namely, that it is in the public interest that a legitimate reasonable agreement shall be entered into.

Now, is it reasonable to expect that these carriers will accept, that these carriers ought to accept, that any conscientious lawyer could advise them to accept, a status of these earnings which has never, as I say, been assigned to it authoritatively in any court and which is denied by a line of authorities as persuasive as those I have presented?

It has also been suggested here that a doctrine perhaps even more novel than that in regard to the surplus should receive the approval of this committee and should be agreed to by these carriers. It is this: That the carriers are entitled only to the amount of money they have invested in these properties and to that only in so far as it has been properly maintained, and that measure of their right is to a return of a fixed per cent, say 6 per cent—as that has been the figure which has been used in illustration—upon the amount so ascertained.

There is a distinct denial of the right of the carriers to anything beyond the amount of money they put into the properties. It is a distinct denial of any property right in the increase of those values. It deprives the carriers of the attribute of property in what they own, that is freely conceded to every other owner of property. It denies that the properties are private properties. It limits the ownership to the exact amount of money originally put in. It absolutely denies the right to the increased value by reason of the growth of the property.

Let us see what the condition of the law is on the subject. I call the attention of the committee to the case of *Willcox* against the Consolidated Gas Co., 212 United States 19, and especially to page 41. Page 19 is the page where the case commences, but I am reading from page 41. The court said:

There must be a fair return upon the reasonable value of the property at the time it is being used for the public.

And on page 52:

And we concur with the court below in holding that the value of the property is to be determined as of the time when the inquiry is made regarding the rates. If the property, which legally enters into the consideration of the question of rates, has increased in value since it was acquired, the company is entitled to the benefit of such increase. This is, at any rate, the general rule. We do not say that there may not possibly be an exception to it, where the property may have increased so enormously in value as to render a rate permitting a reasonable return upon such increased value unjust to the public. How such facts should be treated is not a question now before us, as this case does not present it.

In the Minnesota Rate case, 230 United States, 433, the court says:

The property of the railroad corporation has been devoted to a public use. There is always the obligation springing from the nature of the business in which it is engaged—which private exigency may not be permitted to ignore—that there shall not be an exorbitant charge for the service rendered. But the State has not seen fit to undertake the service itself; and the private property embarked in it is not placed at the mercy of legislative caprice. It rests secure under the constitutional protection which extends not merely to the title but to the right to receive just compensation for the service given to the public.

It is clear that in ascertaining the present value we are not limited to the consideration of the amount of the actual investment. If that has been reckless or improvident, losses may be sustained which a community does not underwrite. As the company may not be protected in its actual investment if the value of its property be plainly less, so the making of a just return for the use of the property involves the recognition of its fair value if it be more than its cost. The property is held in private ownership, and it is that property, and not the original cost of it, of which the owner may not be deprived without due process of law (p. 454).

I refer also to the case of San Joaquin Co. against Stanislaus Co., 233 United States, 454, and Reagan against The Farmers Loan & Trust Co., 154 United States, 362.

Now, with that line of authority as to the ownership of the increase in the value of the property, would any one of you gentlemen advise a client to sacrifice that property and by agreement to take less than is thus conceded to it by the Supreme Court? Would you say that any consideration whatever would justify you in advising a client to surrender that element of value which it has thus been held by the highest court of the land exists in these corporations? I do not see how the advice can be given.

One more suggestion. The question was asked by one of the members of this committee whether or not it would be lawful for Congress or some representative of Congress to allow for the general services of these companies a fixed per cent as a fair estimate of the value of the use; whether or not, in other words, you can find a value and allow, for example, 6 per cent on the value as satisfying the requirement of the Constitution that there must be just compensation. The argument is this: We are entitled as a legislative body to fix rate; that means to fix within constitutional limits the value of the service. Now, here is a property, all of the uses of which are taken over. Can we not, then, go further and fix a value for that entire use in one lump sum, ascertained by a percentage upon the value? That, as I understand, is the question.

I have no hesitation in saying that in my opinion that would be an unlawful exercise of power. Let us revert for an instant to some of the suggestions which I have already made to this committee. What is the franchise of these companies? The franchise is to charge a toll for a service, to charge a toll for each service. That is the power which has been conferred by the States which have granted

the charters; that is the power conferred by the common law if the charters were silent. The thing that the companies are authorized by law and by charter to do is to charge a toll for a service. By virtue of that condition earning capacity of different companies is created growing out of the capacity of the various companies to serve the public. One of them serves the public perhaps twice as much as another. Under the charter right it has a right to charge a toll for each of those services. That is its franchise.

To take that franchise away is declared to be unlawful in the Monongahela case—to take it away without compensation is declared to be unlawful in the Monongahela case. To take it away and substitute something else for it which is different must likewise be subject to the same legal objection. The franchise is not to charge a fixed sum for all of your services; that is not what you are authorized to do by the act of your creation; that is not your franchise. The franchise is to charge a toll for your services; your earning capacity grows out of that. It is not a fixed percentage; it differs with different companies. Each company has the opportunity of doing what it may by the lawful exercise of the power of charging tolls.

If you are not permitted to do that, but your earning capacity is reached through giving a fixed per cent for all your services, you manifestly have taken away the franchise which was given you and substituted something else in its place, and substituted a different thing in its place.

The only way that you can affect the earnings of these carriers is through the medium of their rates, because that is what they are authorized to do by the law of their creation—to charge rates. You can not take away that franchise without paying for it; you can not alter it without paying for it; you can not lessen its value without paying for it; and the minute that you transfer the basis from the rate to the entire service and allow a fixed amount on the entire service, you have not approached the question through the control of the rate, but you have approached it just as if it had been written in the law that for all the services of a carrier the public might allow a fixed percentage.

I submit to you that that is a very different thing from the charter right which each company possesses. To do it would be to take away from the carrier the franchise which it owns and to put something else and something different in its place.

Could any of you gentlemen advise a client to do that? When you get to taking the properties and they no longer have the right individually to charge tolls, still you must determine the value of their right to charge tolls through the principle of the legitimate exercise of that right. You must ascertain the value of the right on the basis of the exercise of their legal right to charge tolls and not on the arbitrary basis of allowing a fixed per cent on values.

Gentlemen, permit me to revert again to the great responsibility of this occasion. Gentlemen who I am sure are patriotic and well meaning come here and ask you to engraft upon this legislation principles which all of us most realize are novel in the law. Is it a time for us to stop and try and determine the soundness of those principles? Is there not a grave responsibility here to sustain the financial fabric of this country? If the carriers concede these novel

principles, if without the concession you gentlemen seek to impose these novel principles, can there be a doubt that the foundations of this financial system of the country will be shaken and rendered?

We are told by one gentleman on the stand that the effect would not be disastrous to the general financial condition. Or he says, forsooth, that railroad securities would thereby be made so unattractive that nobody would invest in them and the whole investment fund of the public would be released to go into the Liberty loan. I do not quote his words. I interpret what I understood to be the purport of his language. Gentlemen, would you, in advising a client, be able to justify your advice by saying you must accept a principle in respect to these policies which will make their securities so unattractive that nobody will invest in them?

Let me go one step further in respect to this matter. The assumption or the assertion that such a measure would not affect the financial condition of this country is based upon a conception, it seems to me, that the owners of these railroad securities are in one class which can be ignored as a part of the financial strength of the country, and that there is enough strength outside, in the other class, to support the financial needs of the country. Is that the fact?

Here we have the President telling you that these securities are at the heart of every investment; here we know that they are the foundation of the solvency of almost every financial institution of the country. Now, instead of stabilizing those values and instead of doing something to bring them into the position where they can be usable to promote the financial strength and to enable the holders to do their part toward contribution to these national loans, you cut all that class off, your banks are cut off, your insurance companies are cut off, your institutions are cut off, your individual holders of these securities are cut off, because they no longer can use these securities as a basis of credit to enable them to do anything in a financial way.

Now, when that happens, what becomes of the financial strength of the country? What becomes of the financial fabric? What becomes of the ability to support the Government in its financial needs, after you have taken the value out of all these securities and they are no longer a basis which can be used to support any public or financial movement?

The considerations which I have mentioned, gentlemen, lead me to the conclusion that it is not justifiable to expect that any of these carriers will accept any one of these novel doctrines which involve the surrender of what has heretofore been supposed to be valuable and substantial property rights. If it be in the public interest that an agreement should be made, I do not believe that you can arrive at the conclusion that the prospects of that agreement can not be improved by the acceptance of these novel suggestions, which do involve the surrender of these substantial rights—at least rights believed in by the public, believed in by the holders of these properties, and the opposite of which has never been established by any tribunal whatever.

The President thinks that, evidently, from his message. The President sees the importance of stabilizing the financial resources of the country and every one of us believes in the principle, to justify

the suggestion, that it is not best to have these contracts made on some basis which recognizes the public opinion as to the rights of these properties, and recognizing the rights which have heretofore been conceded to them by the courts.

Now, as to the amount of the guaranty. As I say, I have heretofore been considering the matter simply from the standpoint of principle. Now, as to the amount. In our opinion the amount which has been offered by the President is clearly inadequate. The reasons I will briefly state. In the first place, the use of these properties is taken now, or at the end of 1917. The basis should be the value of that use as it then appeared, not the value as of some former time. In England one year was considered enough, and that the best year the railroads had, because it was conceded that the value of the use was a demonstrable value.

This proposition goes back three years. The result of that is to reduce the amount by about \$100,000,000 a year. Is that a reasonable forecast of what the results ought to be and should be considered to be during the period of Government control? Is it considered that the services of these railroads will be any smaller during those years? Is it likely that they will do less work? Is it not likely that they will do more work? Is it not likely that the necessities for transportation will increase rather than decrease during this period of the war? Is it not reasonable also to suppose that the operating ratio heretofore existing will be maintained? And, if there is to be more service at the same operating ratio, is it not to be anticipated that the legitimate net earnings ought to be greater? We think that the inclusion of the year 1915 reduces the amount below what is adequate for the use of these properties.

I repeat what I have heretofore said to the committee on that subject: It also ignores the fact that the thing you took over is a different and a larger thing than that which made the earnings of 1915; is a different and a larger thing than that which made the earnings in 1916; and, by reason of the amendment, however, it is the same thing that made the earnings in 1917.

Now, it is \$900,000,000 more than the things that did the earnings in 1916; it is \$600,000,000 greater than the things that did the earnings in 1917. None of that is allowed for in this bill, and we think therefore that this is an inadequate allowance. I do not mean to say by that that the railroads would not accept what is in this bill, but I do mean to say if they accept it they will be accepting an amount, in my judgment, \$100,000,000 less than they would be entitled to under facts of the case as they may be presented.

I must hurry on, because I have not much time. There is one other thing which I wish to present to the committee, and that is whether or not section 14 should provide for a limit to this control. We think it ought to provide a limit. We think it ought to read that it "shall continue at the discretion of the President for a period not exceeding one year after the end of the war."

I, of course, realize that much has been forcibly and well said in support of the section as it now stands, that the reasons given by the Secretary of the Treasury are entitled, not only on account of the position which he holds, but on account of their inherent strength, to our best consideration. But those reasons have not convinced me. Here we have a grave uncertainty, he tells us, as to when Congress could act to perfect the legislation which he considers necessary before

these railroads are turned back. He speaks of a fillibuster that occurred in connection with the shipping bill, I believe, and the impossibility of getting an act through Congress which that indicates in respect to the perfection of the conditions under which the railroads should go back into the hands of the owners.

That same difficulty of getting an act through Congress, would, it seems to me, apply to the act which would return these railroads to their owners. It seems to me that we may be inviting a political campaign on the question of whether or not they shall be returned, or when they shall be returned, and that the return of these properties is thereby made so indefinite that the utmost demoralization may arise in their forces as to when they can be expected to come back under individual initiative. It looks to me, too, that it entrenches those gentlemen who feel that the railroads ought never to go back when it is considered that a minority may prevent their coming back for years, or until the whole situation has so changed that a return would be impossible.

We are face to face with this question: Do we stand for and approve a return of these properties after this exigency has passed or do we stand for and approve a continuation of governmental control? Now, we have got to do the legislation on one theory or the other, it seems to me. We stand for the principle that the properties ought to be returned; we think that the time ought not to be so prolonged that the return would be impossible and the conditions of demoralization as to the retaking in private management of the properties shall not be made so immense that the properties could not, as a practical matter, be taken back.

I call your attention to what Congress has heretofore done in matters of that sort. In the act of January 31, 1862, it was provided that the railroads and telegraph companies should not be held any longer than necessary for the suppression of the rebellion. In the English act of 1871 the duration is one week after the time. The recent act of 1916 in regard to the establishment of a shipping board provided that at the expiration of five years from the conclusion of the present European war the operation of vessels on the part of any such corporation in which the United States is then a stockholder shall cease and said corporation shall stand dissolved. Acts making appropriations to supply urgent deficiencies approved June 15, 1917, which authorized the President to commandeer ships and ship yards, provided all authority granted to the President herein or by him delegated shall cease within six months after the final treaty of peace. The act for the stimulation of agriculture of August 10, 1917, is provided, but the date when this act shall cease to be in effect shall not be later than the beginning of the next fiscal year after the termination as ascertained by the President of the present war between the United States and Germany. The act with regard to food and fuel control provided that the appropriations of this act shall cease to be in effect when the existing state of war between the United States and Germany shall have terminated, etc.

Now, in no contentious spirit whatever, but merely giving you our view as to what the legislation ought to contain, we think that a reasonable limit ought to be fixed by which these properties will, unless the President shall return them earlier, automatically return to their owners.

Gentlemen, I thank you.

FURTHER STATEMENT AND ARGUMENT OF S. H. COWAN.

The CHAIRMAN. Judge Cowan, are you ready now? If you are you may proceed with your argument?

Mr. COWAN. Mr. Chairman and gentlemen of the committee, in the experience of the past in regard to appearing before congressional committees, which it has fallen to my lot to do—not to my lot exactly but my pleasure, as representing certain interests—I have always found that the difficulty that confronts a man talking to a committee is that he is liable to assume that he is a general advisor to the committee and a general advisor for the people of the United States. In other words, he inadvertently, perhaps, arrogates to himself the position of general advisor.

I once heard an old gentlemen who was in Mr. Stanton's office during the war say that advice was a very useless thing; smart men did not need it, he said, and fools would not take it. So a man gets in the position of offering something that is perfectly useless oftentimes much of his advice being about things that do not concern the subject.

It is very difficult to keep from doing that, and it is awfully hard to "follow the rat"—in the view of the old story. I do not wish to repeat anything that I have said to the committee heretofore, which has been printed, or to amplify what I have said; but I shall endeavor to clear up some ideas that have been expressed regarding the matter presently before the committee. It would seem to me rather useless to go into an extended preparation or argument on the subject of the exercise of the right of eminent domain and the resultant damages and the means whereby we make the proof, of the decisions which have been rendered with respect to what the injured party is entitled to.

While this power must be exercised subject to the constitutional right of reasonable compensation, it is not compensation for the property, it is to pay the owners of this property for the reasonable use of it while we take it under the exigencies of war. I take it that as a major premise it will be assumed that the Government of the United States, acting through the President, has taken such possession as it has taken of such property as it has taken—I am sorry those matters are not exactly defined because we can not figure on those exactly—subject to the constitutional right of them having a reasonable return under the circumstances for the use of the property.

Now, those returns may not be what the owners of the property would see fit to agree to voluntarily. They might want to go into court and try the chances of getting more than you might offer. I fancy that if there is to be litigation and a lawsuit about this, and if the advice of counsel to the railroads is to be accepted and he advises as he has indicated here that he could not say that they should accept the amount which the bill offers even, which he says is inadequate, although he says that he would not say they will be taken, and that we could very well avoid a lawsuit.

Of course, I believe in this: If you are going to have a lawsuit, have it. There is not the slightest danger, gentlemen of the committee, of any lawsuit about it, because you are going to give the railroads all they are entitled to and a little bit more. I think we all ought to be willing to do that under the circumstances, but I do not think they ought to want very much more than they are entitled to.

The whole controversy arises over the question of how much they are entitled to, and what would be the measures you would resort to to find out what you believe you ought to accord to them. I take it that everybody is acting in entire honesty in trying to do the proper thing here, but it does look to me, from Mr. Thom's argument, that the \$17,000,000,000 of securities—whatever it was; there is no beginning or end to time or money, but whatever it was he said—that you have got to give them enough to sustain these securities and if you do not do that, then the whole financial fabric of the Government, according to his notion, is gone, and the liberty bonds will go glimmering and nobody here to take them.

If Government ownership in this country comes it will come because the railroads and their allies, the bankers, have reached that situation where they can dictate the financial policy of this country, and if they do get there, then I am in favor of Government ownership—I would rather the chance of the one than the other. But I do not believe what he says.

I do not believe that when the stocks of the railroads which have been paying 5 to 6 per cent for 10 years—and that takes the principal systems that carry 85 per cent of the traffic—are guaranteed by the Government, that they will be continuously permitted to pay that, and if they do not make it, the Government will pay it, that it very much injures those securities for sale on the market. I think it puts them in a better position than they would be without such a guaranty, and the stockholders taking the chances of not knowing how much dividends the directors would declare.

I think he has not analyzed the proposition that I have made to this committee, and to the House committee. I made the propositions I did to avoid what I think is in the air, and that is to utilize this for the purpose of surrounding the head of the stream, to wit, the Interstate Commerce Commission, coming down the other side and getting that advance in rates which otherwise they have failed to get on a fair trial before the commission. And if it does not accomplish that it will not have accomplished anything that is satisfactory to the railroads. If it does accomplish that, my opinion is it is a calamity to the country, and that there is no limit to which these rates will be advanced on Jones, who pays the freight—and I am representing Jones and he has got very few representatives.

The surplus has been brought into the argument here, and it is no new thing. Public economists who are not employed for a purpose, or the representatives of some foundation or other, which foundation has resulted from enormous surpluses—that is to say, the publicists and economists who are free-minded and freethinking men, have generally come to the conclusion that when a property is intrusted with a public use and obtains its income from the public patronage, and is in its nature a monopoly because the public must patronize it, that the public must have some interest to what it gives more than a fair return on its property and thus produce a surplus; and I know of no class of men in the country aside from the railroads and the bankers who do not concede that.

Now, just how that is to be taken, utilized, or applied in a given case, of course, is another proposition. I do not mean that because a railroad company has made a surplus it could be taken away from it. It can not be. After a long study of this subject in a State where

we had the first surplus controversy of the country and had the greatest donations, and built out of the Public Treasury and on the public lands our railroads, we thought we would be entitled to some consideration on that account, but we have never gotten it. At last, the law seems to be—at least it is my opinion, it is the only practical thing you can do under the law and the Constitution—that if a railroad company has the property, it does not matter whether it is given to it, whether it bought it or whether it stole it. I have seen instances where it was mighty like grand larceny, the way they got it—some of them. When it comes to devoting that to the public use by compulsory process, they are entitled to a reasonable return on it, if their consciences will permit them to take it—and I have never known them to have that kind of a conscience to refuse it.

But they want some more. Now, I say that when you come to figure how much a railroad gets, it is something to consider. I will take, for example, the Texas & Pacific, which received land enough to build the Texas & Pacific Railroad. If the Texas & Pacific Railroad gets 6 per cent upon the present value of that property, valued according to the present standard of real estate—I mean as to the property that is devoted to the public use—it is quite immaterial that it was donated to it or how much was donated to it, how much was given in bonuses by towns or otherwise, and how much Jay Gould got from various places in New York—I understand he used to touch them up once in a while and put it into the property—they are entitled to a fair return. A fair return is generally now considered to be about 6 per cent, since the Supreme Court decided the New York Gas case. It may not be fair; it oftentimes is more than fair, sometimes is not enough to be fair, but they are entitled to have it estimated upon the value of the property devoted to the public use at the time the public takes it for its use; it is not entitled under the constitutional law to any more.

What that fair return would be is as uncertain as the reasonableness of a rate. I agree with Mr. Thom that there are many instances where a return that is generally fair according to what was customarily charged for the particular service may by the multitude of transactions raise the aggregate amount to far above that, and they may be entitled to it. But you can not deal with those exceptional cases here.

If the railroad company is entitled to 6 per cent, it is entitled to it under the case of *Smyth against Ames*, and all the cases decided by the Supreme Court of the United States, because it can earn it on a reasonable rate, but it is not entitled to the 6 per cent if it has got to charge exorbitant rates in those times.

We are asked to guarantee—and when I say we I mean the public—the railroads in this exigency for the use of their property a reasonable amount. I say that you can not assert that we should guarantee a reasonable amount and a surplus. The reasonable value upon which you estimate the return may involve property acquired by a surplus, but when we give them a lump sum per annum on that income that lump sum should not have in it or within it a surplus just because it had it before. If the Pennsylvania Railroad has been in the habit of laying up a surplus in addition to the regular dividends and putting that surplus into property as a good policy for the Government that is one thing, but to have the Govern-

ment guarantee now that its earnings shall be upon the standard which will enable them to continue that during the war is quite a different thing, and ought not to be done. And if you do it you will have given them the highest amount they possibly could make, and you have got to get the money somewhere to pay it with.

Our interest in this matter lies at the root of the evil—the love of money. The first section of this bill uses the expression on the twenty-first line of the fourth page—

At a rate equivalent as nearly as may be to its average annual operating income.

Of course, that means an amount of money, that does not mean a freight rate. There is another section of this bill that provides that they shall not without the permission of the President pay more than the customary dividends. I believe that that is about what it says. Why is that? I suppose that is in order that whatever they have may be allowed for such uses as the circumstances might require, and that when, being in the hands of the Government, the Government takes the money, the stockholders would not have a right to come in and say to the Government, "You must pay that to us." It would still be left in the funds of the railroad company. The security holder, if he knew that he was forever going to get the dividend that was paid customarily on his stock, it seems to me he could be satisfied with that, with the guaranty of the Government, just as well he would be with the guaranty of the railroad. So my proposition is that you guarantee to the dividend-paying road a sum of money which is sufficient to pay the interest presently and subsequently to accrue, the fixed charges as nearly as you can estimate them, in the way of taxes, and so on, which are somewhat higher than they were heretofore, and an amount equal to the average dividend to be paid upon the existing stock.

When you put that as the guaranty, and you have guaranteed that, have you not guaranteed as much as the money markets of the world would warrant? Have you not guaranteed all that the stockholders in your Connecticut banks would get? That is all they could get, all they would get, all they expected when they bought the stock. Where is the financial fabric of the country destroyed by that? Then let each railroad have the surplus that happens to accrue, if any does accrue, above that, during this operation, in large proportion, leaving to the Government enough at the time to take care of the weaker lines that may need it and may be injured on account of the diversion of traffic. This proposition involves a diversion of traffic, as the Government may see fit; it involves the putting of the railroads and each one of them to such use as the Government may see fit. Of course, that will have to be paid for. It involves aggregating together all roads for this common purpose. I say "aggregate" them for that common purpose, but give to each one of them the incentive of making as much as it possibly can and give the best service to that end, and the most economical service. If you have failed to do that you will have disorganized every railroad organization in the country, and you will not have benefited by it; you will have increased the sum total of operating expenses until there will be no surplus left in either case, and the Government will be paying more than it has money to pay it with, and it will go right around the head of the stream, as I said, and come down the other side and levy rates on freight for the pur-

pose of paying it, and those freight rates will certainly come out of the pockets of the producers of the very stuff that furnishes the food to take care of the war.

Now, who is going to fix these rates? Mr. Thom has not said anything about that that I have heard. I have not heard the railroads say whom they wanted to fix the rates. I wonder what their answer would be. Who do they think ought to fix the rates? I have not heard that, and I have not heard them state what railroads would accept the proposition that you are asked to pass in the form of this bill. I think somebody ought to know before passing a law proposing a contract, whether there is anybody to accept it. Surely, if they speak before you upon the idea that they will convince you that you should give more than is stated in the bill, they ought to be willing to tell you what ones of the railroads will accept and what ones will not, because you do not know what sort of a law to pass if you do not know who is going to accept it.

I assume that if you thought there would only be of the eastern lines the Pennsylvania and the New York Central, and of the western lines there would only be the Northern Pacific and the Santa Fe, you probably would not be enacting any bill at all with respect to that. It is all up in the air about what you may expect will be done after you pass the law. I can see no good reason why the subject-matter should not have been presented to the committee so that those who are interested in it might be able to figure out what is going to be the result.

I say above all, that the rate should be fixed by the Interstate Commerce Commission, and it should not contain in the bill a proviso that nullifies that power. We find out what the people think about it, gentlemen, if you do it. You already know what to think about it; not a man on this committee that does not know that the vast majority of the people in this country want the Interstate Commerce Commission to go ahead and fix these rates, not a man on this committee that does not know that. They want the State commissions to fix the rates in their States. But if you put in this bill this guarantee of the highest mark they could have made, and then if you fix the rates based upon the amount that the Government pays the railroad in order to reimburse the Government, you will advance the rates enormously in this country, and that is a means of putting the money all into their pockets.

I say that we are not under the obligation to do more than to guarantee the customary dividend that has been paid by those who have been paying the dividends, and those who have not been paying the dividends will have to seek some other means to get the fair value of the use of their property. What that should be has not been proposed by anybody. I wish to remark here that if you would examine, or have examined and submitted to you, the railroads whose tonnage is under 200,000 tons 1 mile per mile of line, you will be astonished to find the railroad mileage of this country that falls under that category. Now, as to those roads, there is no amount of rates that can make them earn much dividends.

Much has been said about, at least, it has several times been remarked, no cripples being desired. Mr. Thom says you do not want to cripple a horse in order to buy him. I believe that was the expression. Well, that may be so, but you do not want to take over

a crippled horse and doctor him up, doctor up the horse and then pay what it was worth before he was crippled, and that is what he proposes.

Before the Interstate Commission they got up some printed documents and read them showing that they were goners unless the commission raised these rates in order to sustain the credit of the country. It was growing out of that last proceeding that their recommendations were submitted to Congress, whether Congress should not consider the situation. They had refused the advance in the 15 per cent case in the early part of the year, when the same plea was made. That is to say, that the whole country and all the fabric of all of the finances was based upon what the amount of the rates was that the railroads should get.

They were getting enough, so the commission held. They were apparently not in danger of suffering disaster, as the commission held. The advance proposed in the Western part of the country was refused entirely.

This brings us right up to the point that they are not satisfied with that method of getting it; they want enough to have the surplus in there, in order that the surplus may furnish the credit for the Nation. I say they are not entitled to have embraced within the guarantee any surplus. If, in the working out of the transaction, it shall happen that given lines of railroad do accumulate a surplus, that the large proportion of that surplus is to go to that railroad, there should be an amount retained by the Government out of the surplus, however, that will enable the Government to take care of the weaker lines that will need assistance, and that will stimulate and help the stocks and bonds that are not saleable to-day.

Speaking about cripples being taken over, I suppose the Cotton Belt Railroad was taken over under the order admittedly, was it not?

Commissioner ANDERSON. I know nothing about it.

Mr. COWAN. The St. Louis Western; I suppose, a large system like that, would be taken over; but the Cotton Belt system has got to take care of its cripple, and the Government then has got to take care of the Cotton Belt. But the other cripples, the born cripples, will still be out in the cold.

There should be contained in the bill, gentlemen of the committee, some provision that would take care of the people who have gone forward and taken a chance on the bet. The Orient Railroad is built from Kansas City now clear out to Alpine on the Southern Pacific, I believe about 740 miles. It now runs through the worst drought-stricken district in the world—unless that is the Sahara Desert. It is good cotton country all through western Oklahoma, clean down to San Angelo, Tex. It is fine stock-growing country, it is developing country; it competes with the Santa Fe, competes with the Frisco, competes with the Texas & Pacific and the Colorado & Southern for traffic everywhere, but it has no cars, it could not turn a wheel if the Government did not say so. It is left out in the cold. It is out there developing a new country, it is built for prospects, and to destroy those prospects injures the people who live on the line, destroys the railroad—is an unconscionable transaction and ought not to be proposed, so there must be some method of taking care of that sort of a case.

I say that if my proposition is adopted here the railroads will receive and the public will receive the assurance of the Government of dividends equal to what have been paid heretofore. They will be guaranteed, they will be permitted, each railroad system, like the Santa Fe, for example, and the Union Pacific, to earn whatever they can, and out of the earnings they get they could pay out of the surplus over and above the interest and the fixed charges, the dividends.

Commissioner ANDERSON. Mr. Chairman, may I ask a question there? Is it not clear, Judge, that if you leave each one of these carriers largely manned by the old personnel, and also organize your plan of Federal control that they will have a large interest in making a surplus, that you will have your operating forces engaged in the same scramble for traffic and cars and profits that they are now in and to avoid which is one of the very reasons for the Federal control now assumed?

Mr. COWAN. They would be engaged in the scramble for traffic and for the accommodation of the public, and that is very much to be desired, I think, because they would perform a better service. But it has been my understanding, Commissioner Anderson, since yesterday—I have not understood it so definitely until yesterday—that the plan was to operate through the existing railroad organization. If that is not what you said on the stand, I would like to correct it.

Commissioner ANDERSON. I did say it.

Mr. COWAN. I am just going to recall that assumption.

Commissioner ANDERSON. One of the chief difficulties that the Government will face will be to get perfectly honest, patriotic, and upright men, who have been brought up in the service of the separate corporations, to remember that during Federal control they are working for the Nation, and that they have no interest to try to divert traffic to their particular corporation, to try to get or keep cars on their particular line; that their only interest is to move traffic for the benefit of the people of the United States. Now, you would utterly destroy that by making it the bounden duty of the old officials of that road to get all the traffic they could, all the cars they could, make all the money they could—in other words, you would keep the competitive system alive when we have taken Federal control in order to suspend it, would you not?

Mr. COWAN. In order to keep it from being destroyed.

Commissioner ANDERSON. "Suspend" is the word I put there.

Mr. COWAN. "Suspend it" means nearly the same as destruction.

My opinion—and I am only giving you my opinion, gentlemen, to take it for what it may be worth, and it may not be worth anything—but I understood that the plan was to operate these roads through their present organization. Of course, I am speaking upon that assumption. If I were to address myself to a case where the Government is going to discharge all those men and get a crowd like they have in building the cantonments and shipyards, and one thing and another, I would speak in an entirely different way. I would be opposed to the bill in such a shape. I do not believe any man can operate the railroads of the country in this shape without taking over the officials and the forces of that railroad. Human nature is that a man operates best when he is doing it for his own best interests. The employees will feel that they are acting for their own best interests when they are handling the traffic of their com-

pany to the best advantage, in the most economical way, and producing the best results, and accommodating the people who patronize the railroads. That is my opinion.

So feeling, too, I believe that the guaranty ought to be to each railroad. The guaranty ought to take care of the financial situation and give the public confidence in these securities. It need not go further with regard to public confidence. Then I believe the stimulus and incentive to economical operation and the accommodation of the public ought to be there in the organized forces of each railroad. That is my opinion. I have talked with some of the prominent men, whose names I should not mention, perhaps. I do not believe there is much disagreement in regard to that opinion. The question has been how you could accomplish it with this guaranty fund. I think the plan I have suggested is perfectly simple, but it goes further in the way of financial help and aid to the railroads' securities in this, that the Government takes some part of the surplus that might be made and uses it to help those which need it, in the way of the payment of their interest and dividends when it shall be necessary, and in the way of the upkeep of their property when it is necessary, in order to perform service for the people and for the Government.

Of course, there is no such thing as a railroad performing simply service for the Government. It must be a service for the public, and the taking over of the railroads for that purpose and creating and putting in one combined force of operation and for purposes of operation, means the distribution of the cars and the locomotives and loss of their facilities. When you come to fixing the pay—the amount that shall be paid, rather, by the ordinary shipper, anybody who ships and uses the transportation facilities, that should be fixed in that manner in which heretofore we have done it, for reasons that I have spoken of when I was before the committee at a previous time.

Senator KELLOGG: Would there not have to be some guaranty in this bill that the stockholders should have a right to have their road earn what it reasonably could?

Mr. COWAN. That is involved in my proposition for the dividend-paying property. I take it that, in so far as the financial fabric of this country is to be affected by, or rests upon, the railroad securities, it is the dividend-paying securities and the interest-paying securities, and that it could not have rested upon a boat without a bottom; so that the guaranty would apply to all such roads, Senator Kellogg.

Senator KELLOGG. What I meant is this: You said let the railroads earn what they could above the guaranty.

Mr. COWAN. Yes, sir.

Senator KELLOGG. Then there should be some guaranty in the bill, or some provision in the bill that would give the stockholders a right to operate their roads, so they could all earn something.

Mr. COWAN. Oh, yes; that is what I am speaking of. I understood Mr. Anderson—I think he is quite correct about it—as to a matter of policy, that presently, at least until we see how long we are going to have to take these roads—personally I believe the only sensible thing to do is to operate through organized forces. I do not think that what might appear presently the thing to do would appear to be the thing to do two years from now, after we shall have the experience. It might not be, but I assumed Mr. Anderson was speaking somewhat with authority when he said that would be the plan.

Senator KELLOGG. Yes; but it is not in the bill.

Mr. COWAN. I know it is not, but it would be the plan if the bill contained a guaranty in the manner I have suggested. It would be naturally involved in the bill.

Senator TOWNSEND. But suppose that the Director General diverts the traffic from the prosperous road only, or less prosperous, and lets that less prosperous road earn a surplus which it never had earned before, would it under your plan be entitled to that surplus and the other denied it?

Mr. COWAN. Senator Townsend, I have not thought about that. I do not know. It might be there ought to be a qualification there, that in any event it ought to earn more than the amount it pays for dividends, if it has not been making a dividend. You will find a good many things that have not been considered, gentlemen, when you get together and get to discussing this subject more fully.

Commissioner ANDERSON. If you are going to guarantee the stockholders that the roads shall continue to earn, which I take it Senator Kellogg's question means, and if the I. C. C. is to continue to make rates and the Director General is to make wages, just where will the United States Treasury come out?

Mr. COWAN. Well, there has been such a big circuit in the roads that handle 85 per cent of the traffic, that if we continue to approach their net earnings as heretofore, there will be a good deal of leeway there. None of these matters are without their difficulties. The whole subject is one of great complexity and great difficulty. The difficulty is to pursue the course that will be the least—what was your expression, Mr. Anderson?

Senator KELLOGG. Least bad.

Mr. COWAN. That is it; the least bad. Now, as to the diversion of traffic again, I think the Director General himself believed—I think he has so expressed it, either before this committee or the house committee, that the amount of that diversion will not be so great as might be supposed, after we relieve the congestion at the terminal. I think the congestion at the terminals will probably account for more diversion than anything else, so that the line hauls to a large extent will not be reduced, and the sum total of the earnings will not be decreased very materially. I think that the people who do the shipping know better how to route their traffic generally, and that will be pursued. It will go along lines of least resistance, no doubt. There will be no object on anybody's part, the Director General's or others, to divert traffic for the purpose of changing the amount of earnings on one railroad, as compared to another, but there will be on these short lines you leave out—surely it will be taking money right out of the treasury of the railroads they have taken control of, to leave one road out that might handle the traffic, and hand it over to others and thus starve the road to death. The railroads could not give the cars without the Government said so. I think when you give it consideration, and I believe that the Director General, when he gives it consideration, will conclude that on the whole it is best to take over all of the railroad properties; not discourage the building of short lines, not injure them or the communities where they operate, and to operate them in connection with the systems with which they connect, doing away with the overhead expenses and office organization, and in the end it will be a great deal better for the country. It will

commandeer and get together the resources of the country in a better way, on equal terms, and I think that plan ought to be pursued. I believe it to be very desirable and worth very careful thought.

Now, always, of course, in approaching these subjects we must do so under the fear that somebody will say, "Well, you are against the Government; you are trying to keep from doing something the Government wants, or you want to do something to stop the Government from doing this or that." I wish to assure this committee that is not in any sense the case with the people I represent. We are the first to help the Government. We are ready. We want to win the war. We are raising the stuff that has got to be utilized for doing it. We want to reach the markets of consumption without any additional charge placed upon it. We think you would be justified in putting an amendment to this bill that the rates on grain, foodstuffs, and livestock should not be increased during the period of the war; but it is left to the Interstate Commerce Commission, with their regular methods, with their knowledge of the need of interrelationship of rates, and then you do not have a guaranty of that that compels them to do what they know is wrong. Nobody is going to suffer very materially on that score. The point about it is we want to avoid the necessity of calling upon the people to pay enormously higher rates in order to meet a guaranty that we foolishly entered into. That guaranty ought to be in terms like the injunction proceeding in *Smyth v. Ames*. They enjoined the State of Nebraska from certain rates, but the condition there was that that was only temporary.

If the circumstances and conditions should change, as they doubtless would, then application could be made to change the terms of the injunction, and it ought to be so here, and again I appeal to the committee to make it so in the bill that you may take an invoice, take stock of the situation, and that the amount of compensation may be changed should circumstances demand it, so at least as to give the railroads a reasonable return and a little bit more. We are willing to go a little bit further, but we are not willing to turn it over to the gentlemen in New York and elsewhere, to levy under a guaranty higher rates at their will in order to meet that guaranty; and we don't want to be left where we would have to appeal to their patriotism not to do it. Now, their patriotism may be all very well, but it is not worth a cent when it faces an advance in freight rates, as evidenced by the fact that Mr. Willard's argument in favor of advancing the rates on the Baltimore & Ohio Railroad, when he was on the National Council of Defense—I suppose he was right about it, representing the Baltimore & Ohio. He ought to have done it, but I do not think he was a very good representative on the National Defense during that hour that he made that speech. I thought it was a trifle questionable whether it was a speech altogether imbued by patriotic desire. It rather looked to me like it was a desire to get something for the Baltimore & Ohio Railroad.

These railroads are the highways of commerce—the arteries of commerce—the vital force that must be operated to the best advantage, in order that all of the people can get all of the wheels turning. I say now that I think this country is facing a proposition that might bring the greatest calamity that ever happened to the Nation. That is, stop the wheels from running. It won't do. Encourage every-

body to operate every possible producing agency there is in this country. Why, it is said in the public press that we advise the stopping of building in the country. If you will stop construction in this country for one year, you will wreck the railroads of this country, because they won't have the traffic to handle. You will put labor out of employment. You will stop the brickyards. What is a man going to do that stops making brick? He will stop the bricklayers. What are they going to do? There is a great economic question here, gentlemen, and you have got to face it, and that is, in this Nation of a hundred million people, with millions of industries interwoven with one another, all of it depending upon transportation, all of it depending upon a market, everyone depending upon the ability to sell what he raises, others to buy at a price and at a time that will enable him to live—it won't do much to interfere with the ordinary course of business, and if you do you are going on the rocks, and that is where you will go when you leave these railroad systems without a desire or incentive to move a car; to save the loss and damage, to save the traffic, to economize in handling it, prevent destruction, to prevent fires—it invites a calamity, in my opinion, to do otherwise than to treat each one as an entity, and force that railroad corporation to the highest state of efficiency, which they say and have announced they desire to perform during the war, and which I believe they want to perform, but do not guarantee above what is reasonable to support the securities which heretofore have been paying the interest and the regular dividends. When you shall have done that, you will have gone as far as it is necessary to sustain the financial fabric. You will have brought into force the incentive to do the best they can. You will have the operation under the direction of the Director General, who, I suppose, is as competent a man for that as could be had. I have the fullest confidence in his ability to do that, when he shall have taken the advice, when he shall have obtained the information, when he shall have come into knowledge of the great transportation business of this country, which is difficult and takes a long time to do. I believe that every agency of the Government is designed to do the best for the people. I am certain the people want to do the best for the Government, but give the people a show to do it and they will perform their part.

I thank you, gentlemen.

SUBSTITUTE FOR SECTION 1, SUGGESTED BY MR. S. H. COWAN.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President is hereby authorized to enter into an agreement with any common carrier owning or operating any railroad or system of transportation now under, or which shall hereafter come under, the control, possession, or operation of the President, or the control, use, possession, and operation thereof taken by him for public use (hereinafter called Federal control) by virtue of the act of August twenty-ninth, nineteen hundred and sixteen, and the joint resolutions of April sixth, nineteen hundred and seventeen, and December seventh, nineteen hundred and seventeen, declaring a state of war, and the proclamation of the President of December twenty-sixth, nineteen hundred and seventeen, for just compensation to be paid or secured to such common carriers or other person, firm, or corporation, the owner of any railroad or system of transportation or any part thereof, such agreement to provide for the just compensation to be paid or secured for the use of the railroad or other property of such carrier or system of transportation, or any part thereof, devoted to public use during the period of Federal control. Payment thereof to be guaranteed by the Government to the party entitled thereto as herein provided. The amount of

such compensation so guaranteed not to exceed the sum per annum, or proportionate part for fractions of a year, the equivalent of the average yearly operating income (as that term is used in the accounting system of rules prescribed by the Interstate Commerce Commission) for the period July first, nineteen hundred and fifteen, to December thirty-first, nineteen hundred and seventeen, such payment to be made at such stated periods as may be agreed upon, quarterly or annually, in the amount sufficient to pay the interest on outstanding bonds or other evidences of indebtedness or obligations of the carriers on which current interest has been paid during said period, and in addition to such interest an amount sufficient to pay the same per centum of dividend on outstanding stock of such carrier company issued and sold prior to December sixth, nineteen hundred and seventeen, as has customarily been paid, not exceeding the average percentage of dividend paid during such period since July first, nineteen hundred and seventeen.

The net revenue from operation of each of such carriers owning or operating such system of transportation, or part thereof, under Federal control, as aforesaid, in excess of the amount guaranteed to be paid, as aforesaid, as interest and dividends, to be retained by the President, the director general, or other agency, as may be determined by the President for maintenance other than ordinary current expenditures required for maintenance to keep the property in the usual state of repair or for additions and betterments, equipment or new trackage or facilities or for general uses of administration not included in operating expenses, or to aid in paying such interest and dividends as guaranteed, such excess net revenue, less the amount expended for the aforesaid purposes, shall, on final settlement, or at periods provided herein for settlement between the Government and such carriers, be paid over to each of such carriers earning the same or on whose line it was earned; and the President is further authorized under such agreement to make all reasonable agreements for the maintenance, repairs, and renewals of property of such common carriers, charging to operating expenses the amount properly chargeable thereto, and to capital account such expenditures as under the accounting rules of the Interstate Commerce Commission should be charged to additions and betterments the cost of such additions and betterments, to be deducted out of the standard return upon the final settlement with such carrier; or at periodical settlements as may be provided for by such agreement; and the President may by such agreement provide for the creation of such reserve funds for renewals, replacements, and betterments and for the depreciation, if any, of the property and equipment to the end that at the termination of such Federal control the property shall either be turned back to such common carrier or party entitled thereto in substantially as good state of repair and as complete equipment in as good state of repair, as at the beginning of Federal control, or that failing to do so just payments shall be made therefor to such common carrier, and in the event such property is turned back in a better state of repair or with additions and betterments, or additions of equipment reasonably necessary in the operation of such property, due allowance shall be made therefor, to be deducted out of the standard return.

If the President should find that the condition of any such carrier was during all or a substantial portion of the period of time subsequent to July first, nineteen hundred and fifteen, because of such carrier not having kept such property in such state of repair or because of delay in operation or repairs or other exceptional condition, then the President may make with the carrier such agreement for just compensation as under the circumstances of the particular case shall seem just. The President is further authorized in such agreement to make all other reasonable provisions not inconsistent with the provisions of this act or the act of August twenty-ninth, nineteen hundred and sixteen, that he may deem necessary or proper for such Federal control or for the determination of mutual rights and obligations of the parties arising out of such Federal control but which will not obligate the Government to exceed the guarantee herein provided for.

SUBSTITUTE FOR SECTION 11, PROPOSED BY S. H. COWAN.

SEC. 11. That carriers while under Federal control shall, notwithstanding such Federal control in whatever form it may be exercised, in so far as not inconsistent with or contrary to this act or any order of the President in the necessary exercise of the military power directing or regulating "transportation," as that term is defined in the first section of the act to regulate commerce or requiring or directing the performance of any service or the doing of any other thing for military purposes otherwise necessary for the purposes of the war, be subject to all laws, duties, and liabilities as common carriers, whether arising under statutes or common law, in the same manner as if such property under Federal control were operated by the corporations or persons owning the same as common carriers; and all suits, actions, and proceedings to enforce such

duties, or recovery for any liability, or the enforcement of any other right, may be brought by and against such carriers and judgment rendered, decrees and orders made as provided by law. The possession, control, and operation by the director general of the property used in the transportation service and the operation thereof shall be deemed to be that of such carriers with respect to the property operated by such carrier at the time of taking such Federal control. But no process, measure, or final, shall be levied against any property under such Federal control or the possession and operation thereof in anywise interfered with. The President shall prescribe the means and methods of payment out of operating revenue derived from such Federal control of any judgment or the enforcement of any decrees or orders that may be rendered or made against any such carrier, the charging against the standard return the amounts which may be paid on account of liabilities accruing prior to the taking of such Federal control, and as to the payment of judgments or satisfying the decrees or orders for liabilities accruing during such Federal control, the amount paid therefor shall be charged against the operating expenses under such Federal control.

Provided, That the act to regulate commerce, approved June twenty-eighth, nineteen hundred and six, and acts amendatory thereof, and the laws of the several States or the administrative orders or requirements made in the administration thereof, shall not as to rates, fares, and charges be superseded by anything in this act contained or any order of the President, but the power to make rates and regulations thereof shall remain as it was at the time of taking Federal control of any common carrier, except in special or exceptional cases where it shall be imperatively necessary in the transportation of troops, Government employees or officials, munitions, supplies, or other traffic for the Government or for the Army and Navy, or any special cases of calamity or other imperative necessity where in order to relieve such exceptional conditions it may be necessary to require traffic to be moved without compensation, or that charges different from the regular and established rates be made. In all such cases the President, or director general acting under authority of the President, may make such orders as will meet the emergency. Nothing in this paragraph shall be held to affect or in any wise limit the right or power of the President, or the director general acting under authority of the President, with respect to the routing of traffic or changing its destination or placing embargoes when necessary to prevent congestion or the impeding of traffic or the doing of any other thing that may be necessary under the war power with respect to the control of such "transportation."

All pending cases and proceedings before the Interstate Commerce Commission shall proceed as heretofore or as may be directed by the commission, and all proceedings which under the act to regulate commerce may be brought against or by a carrier either before the commission or the courts may be brought by or against such carrier under Federal control in the same manner as it might have been brought without such Federal control.

The director general shall be authorized to bring and defend all suits and proceedings in like manner and to the same effect as the carrier not under Federal control.

NOTE.—The foregoing probably will have to be added to it a proviso stating carriers shall be liable for valid claims arising during control but not put into judgment or paid; that is, they take back the property with those liabilities.

The CHAIRMAN. Mr. Plumb, you can address the committee now.

ARGUMENT OF GLENN E. PLUMB.

Mr. PLUMB. Mr Chairman and gentlemen of the committee, I wish to take up the argument where it was left by Judge Thom. I find myself in a well beaten, circular path, wherein the dog of rates leads and is chasing the cat of value around and around. At times I was afraid the dog was going to overtake the cat, and at times I was certain that in a moment more the cat would have leaped ahead of the dog, but at the end of the argument, I found them equally distant from each other and the same distance from the center of the circle, in the positions they were in when the race began.

Judge Thom has cited to you some authorities as stating the value of the property at the time it is being devoted to the public use, must be the basis upon which regulation shall be exerted, either in prescribing rates or in fixing compensation, or in the Monongahela case, in the case of acquisition. I want to call your attention to some

distinctions that to my mind should be made in these cases. There is *Wilcox v. The Consolidated Gas Co.*; the various water-power cases in California; the Public Utilities case in Wisconsin; the Gas case in New Jersey, and other kindred cases.

The first distinction is that in none of those cases was the property under consideration a public highway. In none of those cases were the functions which were being exercised by the corporation, purely a governmental function. In these cases, the property which was under consideration was private property, which the owner had voluntarily subjected to public use, and whereby the contract which he made with the public when he subjected that property to public use, he had granted to the public a right or interest in the regulation of the charges which he made. There is no restriction on the title by which they obtain their property. As an individual, I might erect an electric-light plant, a water-power plant, and a gas plant. I need no franchise for that purpose. If I deliver my product in wagons, through the street, in chunks of ice, in cans of oil, or in compressed tanks of gas, I do not need to ask any privilege of anybody to engage in that enterprise.

Senator KELLOGG. May I ask a question there? I thought the Supreme Court of the United States decided in the Gas case, 130, and had decided several times since that a gas company in a city occupied the position of a public corporation; in fact was a public service corporation.

Mr. PLUMB. They do, Senator, and I am just coming to that; but the moment I abandon my own individual efforts for the delivery of my product, and ask the use of the public highways for the purpose of making that delivery, then I require a franchise, and when I obtain that franchise, that contract with the people to use the streets for that purpose, then I have agreed that they may regulate the use of my property, but I did not acquire my property subject to such a limitation. It is my property and I can withdraw if from that use when I desire. I am not bound to have my investment in that property perpetually devoted to the public use.

If the land upon which my gas plant is situated becomes more valuable for some other purpose—some other private purpose—than it is to me as a gas works, I am at liberty to sell that land and place my gas producing project somewhere else, without asking any legislative consent whatsoever. That is not true of railroad property. Railroad property is property devoted to the public use, for highway purposes, and it is irrevocably devoted to that use. It can only be withdrawn by the consent of the legislature under which the title was acquired. It is not private property which is subject to public regulation, because the owner has consented that it may be. It is property which the legislature said the owner might acquire for public highway purposes and only for that purpose, and by his very acquisition of the property under his charter he has irrevocably dedicated that property to the public service for highway purposes, and he has such an interest in that property, only as the legislature has permitted him to acquire.

There is a very important distinction between public utilities, which are not public highways, and public utilities which are public highways. In the one case, you have the property devoted to a

public use by the owner, in return for a franchise as a condition which he has created, that his use of that property may be subject to regulation. In the case of railroads, you have public property devoted to use for public highways, in which the people have granted to the governmental agent a right to receive remuneration for the services which he renders.

I want to call your attention to some language used by Judge Elliott Anthony in the constitutional debates in Illinois, and I do not cite this as a binding authority, but merely for the cogency of the reasoning as stating what, some 47 years ago, at the time the constitutions were being adopted—what was then the motive that impelled the people to put these provisions in the constitution.

Judge Anthony says:

Great lines of railway on which whole communities depend for their material progress and even subsistence have come to be regarded as the private property of individuals. They are in fact trusts held by individuals for public use, and subject to certain claims for private remuneration.

Mr. THOM. Did I understand you to say, Mr. Plumb, that these cases that I referred to were not railroad cases—any of them?

Mr. PLUMB. I said that there was a distinction between some of the cases which you cited and railroad cases.

Mr. THOM. You do not mean to say that I did not cite railroad cases?

Mr. PLUMB. Oh, no. You cited the Minnesota rate case, and you cited one or two other railroad cases. Now, as to the railroad case which Judge Thom has cited—and we will take the Minnesota rate case as being perhaps the latest and most authoritative—I shall not attempt to repeat the language verbatim, because I think we are all familiar with the language, and my memory for exact quotations is not accurate, but I believe if I do not state the substance, I will be subject to correction. In the Minnesota rate case, the Supreme Court said that investment alone could not be the basis on which the rates should be determined, because that investment might have been imprudently incurred and the public did not underwrite such losses, and since the corporation could not be protected against such losses, it would seem fair that it should enjoy such accretions, or might enjoy such accretions in value as were inherent in the property. I think that is the substance of that declaration.

Mr. THOM. Well, it fairly held there, must be a recognition of the fair value, if it is more than the cost.

Mr. PLUMB. Then later on in the opinion he says, "But the single question to be determined is whether the rates allowed are fair compensation, and if the company is to receive a recognition of more than the investment in its lands, it certainly should be satisfied if it is allowed the same value as adjoining and contiguous land"; but he did not pass upon the question.

There are other cases which Judge Thom has cited, which seem to apply the same thing. He cites from the case of *Cotton v. The Union Stockyards Co.*, Justice Brewer's decision, and I think a case or two in North Dakota. Now, I want to refer to Justice Brewer's decision, because he did put in such a remarkable distinction in that Union Stockyards case. He said:

The value of the investment of any manufacturer in plant, factory, or goods, or all three, is what his possessions would sell for upon a fair transfer from a willing vendor to a willing buyer.

And I think that is the position that Judge Thom takes. He is entitled to the whole value of his property, determined upon its producing basis at the time it is taken.

Then Justice Brewer goes on—by the way, was that Justice Brewer in that case? It was the judge in that case, anyway.

Mr. THOM. Justice Brewer.

Mr. PLUMB. Justice Brewer says:

As applied to a private merchant or manufacturer, the foregoing would be elemental, but some difference is alleged to exist where the manufacturer transacts his business only by governmental license, whether called a franchise or by another name. Such a license, however, can not change an economic law *unless a different rule be prescribed by the terms of the license, which is sometimes done.*

And in the Chicago, Burlington & Quincy case, to which I called your attention in my argument, it was held that a different rule was prescribed by the license, and that it was not the value of the property which the owner could receive in a condemnation case, but the diminution in the value of the use.

Now, in the Minnesota Rate case and in the other railroad rate cases, all of them—I make no exception, to which Judge Thom has referred—there was no reference whatever to charter rights, the constitutional limitations, or to the extent of the privileges which had been conferred by legislative enactment, and again I want to call your attention to what the Supreme Court has said when such a circumstances arose. Down in the State of Kentucky, they adopted a constitution which had a provision that is very common in many constitutions, forbidding the consolidation of parallel or competing railroad lines. The Louisville & Nashville had effected many such consolidations; had put out its securities on the faith of such consolidations, and finally consolidated with another line. The State of Kentucky sought to enjoin that consolidation on the ground that it was a violation of the constitution, and it got to the Supreme Court of the United States in due time, and there it was urged, "Why, we have made these consolidations for years; nobody has ever objected; we have asserted the right; we have consolidated; we have issued our securities and no objection was made at the time this consolidation was effected until after it had been completed."

The Supreme Court said (161 U. S., 677, p. 690), in the case of the Louisville & Nashville Railroad Co. v. Kentucky:

A power is frequently yielded to merely because it is claimed, and it may be exercised for a long time in violation of a constitutional prohibition without the mischief which the constitution was designed to guard against appearing, or without anyone being sufficiently interested in the subject to raise the question, but these circumstances certainly can not be allowed to sanction a clear infraction of the constitution.

I listened attentively to Judge Thom's argument, to all of the argument of the railways' representatives that have been presented to the Interstate Commerce Commission in the valuation cases, and I have yet to hear one single assertion of a single right that is based upon a single legislative grant, not one, until just before Judge Thom closed he said, "Under our charters the franchise which is conferred upon us is the franchise to charge a toll."

Vested rights are wonderful things. They must be protected. Vested wrongs are sometimes even more wonderful. The situation

reminds me of an ancient illustration. There was once a great financier who embarked large sums of money in a transportation enterprise, and exacted as the security therefor a bond. The enterprise failed. The bond matured, and due proceedings were brought for the exaction in the bond. That bond called for the getting of a pound of flesh from the breast of the obligee nearest his heart. It was plainly written in the bond. It was admitted that was the demand, and that it could be collected, but when the demand was made, the judge presiding said, "Let me see the bond," and when it was produced it was found that only flesh could be taken; no blood could be drawn. As I understand the position of the carriers, they are insisting upon their rights to the last penny—to the last penny. If the demands which they make were to be allowed to them, they would not only take what was nominated in the bond, but they would draw with it the blood of this country. We would be bled pale to support an indebtedness as great as that which we must now incur to protect our liberties, and so I say, let us look at the bond, and if the rights must be determined on the bond, and not by agreements, let us determine what rights they have, and what values the bond attaches to those rights.

You will find when you do come to investigate the bond, that there is no right conferred upon a single one of these corporations to do one dollar's worth of interstate commerce. That will surprise you. I do not say that the public should insist upon as strict a reading of the bond as the carriers are now insisting upon, and when I say that under the bond no carrier has a right to transact a dollar's worth of interstate commerce business, while it surprises you, I think you can be convinced of it in a moment. The States conferred upon the Federal Government their whole sovereignty over interstate commerce. No State could authorize its creatures to engage in interstate commerce, except by the consent of the Government, and the mere acquiescence in the exercise of a privilege, the mere license to exercise a privilege which the Federal Government has so far permitted these companies to exercise, does not confer a vested right. However, that in no wise detracts from the vested rights which the charters of these corporations under State laws have conferred upon them, and if the rights which Judge Thom claims on behalf of these carriers do flow from the grants which have been made to them, then certainly he can not object to the amendment which I have offered. If those rights are to be construed in the manner which he claims shall follow, they are not prevented from procuring such a judicial decision as to the construction of those rights. If the rights, however, are to be more strictly construed, he should not ask the public to surrender the rights which the public has retained in the absence of such a construction.

In a moment of clairvoyance last night, I thought I saw Mr. Rea, Mr. Fairfax Harrison, and Mr. Willard go to the President and say: "Mr. President, we are a committee appointed by all the railroad interests in this country. We have full power to represent them. We have failed in the satisfactory performance of the governmental functions you have entrusted to us. We wish to return that function to the Government in this emergency. We ask the Government only to guarantee to us the proper maintenance of our properties, while it operates them. That it shall pay all of the legal indebted-

ness which we have incurred, the fixed charges of the obligations which we have issued, and it shall insure to our stockholders the same return that the Government is paying to others who contribute their resources to the nation in this emergency."

Such an example of patriotism, gentlemen, would have taken the dollar mark away as standing for American patriotism. It would have reduced it to the original symbols which stand for the United States Government, for our nation, with such a display of patriotism on the part of the people who claim to control one-seventh of the wealth of this Nation, that the might of Prussia and the powers of Hell could not prevail against it. I believe it is in the hearts of those men to do that thing, if it were in their power. If that were done, we would have no financial disturbance in this country. Would their securities have been depreciated below their present basis? Would they have been appreciated to any extent whatsoever? And if we do not reach such a basis as that, where one-seventh of the wealth of this Nation after being assured of all its legal obligations, contributes the balance to the service of the Nation, on the same basis as the rest of us must contribute our dollars to the service of the Nation—if that is not done, do we not create a class controlling one-seventh of our wealth, that shall have the privilege of drawing from all the rest of us, if their securities are advanced, the means whereby they may bear a fair share of the moneys required in this emergency.

Senator KELLOGG. Did those gentlemen ask the President to take over the roads?

Mr. PLUMB. I said that was in a moment of clairvoyance. It was a dream, a beautiful iridescent dream.

Senator KELLOGG. Well, I just wanted to know whether they did or not, that is all.

Mr. PLUMB. Gentlemen, I thank you.

The CHAIRMAN. Mr. Thorn, if you are ready the committee will hear your argument now.

ARGUMENT OF MR. CLIFFORD THORNE.

Mr. THORNE. Mr. Chairman and gentlemen of the committee, unfortunately I have not heard the argument that has been made by Mr. Thom on behalf of the railroads. I have heard a brief outline of some of the positions that he has taken, to which I desire to make brief reference.

It has been stated to you that this is not a rate case. That is true, but in turn I call your attention to the fact that this is not a condemnation case. It is a cross between the two. These railroads are not giving up the ownership of their property. At the close of the war they may get them back with much increased value above that which they now have. We are not dealing with a case of purchase. We are dealing with a case of Government operation, and the issue is, first, what is the practical, feasible way of operation. Second, what is the proper compensation to be paid the carriers for the use of the property during this period of operation?

As to the first issue, I have recited at length certain facts in regard to the regulation of our carriers under the present governmental machinery. A few days ago Mr. McAdoo made an order affecting demurrage rates. There was no opportunity for any person to pre-

sent the side of the shippers before that conclusion and that order was arrived at. It had all of the essentials of an *ex parte* hearing. A few days later representatives of the National Industrial Traffic League asked for an opportunity to be heard before Mr. McAdoo in regard to the demurrage regulations and how it would affect the business of the shipper. No opportunity was given for a public hearing that was desired. We do not take exception to that method of procedure in that particular case, because that related to operation so closely. It effected the release of cars during a great national emergency. Other questions may come up of a like character. Charges for the use of a car for storage purposes are not analogous to charges for the use of cars for transportation purposes.

Gentlemen, put yourselves in our shoes for a moment. The carriers have two incentives to force their rates to a higher level. First, if Government ownership and operation follows the war they want that income on just as high a plane as possible, because with almost no exception when any great nation has purchased the transportation system of that country one of the controlling, if not the chief factor has been the capitalization of the net income. That being true, if Government ownership follows the war they will want that net income on just as high a plane as possible, regardless of whether they get any of it during the war.

On the other hand, if private ownership and private operation follow the war, they will be doubly anxious to have the rates on just as high a plane as possible. The Government will also have an incentive to place those rates on a high basis. There will be a temptation to milk the freight traffic of the country for carrying on the war—an indirect tax in place of a bond issue, and as I described the other day, that will hit some shippers hard, and others will be able to pass it on to the consumer. It will compel hundreds of independent oil refiners, jobbers, and manufacturers to go out of business before the war is over, if general advances in freight rates are put in.

Senator KELLOGG. May I ask there, Germany did use her railroads to help pay the Government expenses, didn't she, under the guise of rates?

Mr. THORNE. I am not aware of the fact. I know that it did not occur in Great Britain.

Senator KELLOGG. No; it did not. I don't mean during the war. I mean before the war.

Mr. THORNE. I think that I would in this case, as in many others, prefer to follow the example of the allies.

Senator KELLOGG. So would I. I do not want to see the German way of doing business established here, even on the railroads.

Senator CUMMINS. Mr. Thorne, from your knowledge of the past, do you know whether the men who have been called around Mr. McAdoo for the purpose of managing the railroads, have heretofore expressed an opinion with regard to the adequacy of the present rates?

Mr. THORNE. Oh, they have invariably claimed they were inadequate. The majority of the men surrounding Mr. McAdoo to-day are railroad men. In the past it has been a common statement amongst shippers that you could not visit the officers of the commission without finding railroad men in the elevators or in the hallways. They were simply swamping the commission with their viewpoint—their attitude on these subjects; but now, gentlemen, when

we visit the commission's office, we not only find them in the elevators and in the hallways, but we find them permanently lodged there by the Government, and we have to get to Mr. McAdoo frequently by going through these railroad officials.

Senator CUMMINS. Well, I am assuming that it is perfectly proper for them to be there. I can't imagine how we could operate the roads without such help, but I want to know whether they had heretofore reached a conclusion upon the necessity of increasing the freight rates?

Mr. THORNE. There is no question but that is true, because of their universal testimony to that effect, and I am not criticising them to the slightest extent. If I was in their shoes, I would probably do exactly the same thing. There is a direct conflict of interests between that of the shipper and of the railroad.

Commissioner ANDERSON. May I ask a question there, Mr. Chairman?

The CHAIRMAN. Mr. Anderson?

Commissioner ANDERSON. Mr. Thorne, do you not look at it as but the duty of a member of the Interstate Commerce Commission to listen as courteously to a railroad man as to the representatives of shippers or of chambers of commerce, or of any other legitimate business? Could we perform our public functions and exclude him from a chance to talk, not about pending cases, but generally about railroad problems? Is that the implication of what you say here and the criticism that you find railroad men in and about our building?

Mr. THORNE. Mr. Anderson, it would not only be highly improper, but I mean it would be highly unjust if you did not listen to the railroads. There is not a particle of difference between us.

Commissioner ANDERSON. You regard yourself justly as entitled to come to my office or the office of any other commissioner and talk to him about any matters of general import. Is there any reason why I should exclude any railroad man and admit you or exclude you and admit the railroad man? Is not every public official bound to impartiality and open-mindedness in those matters?

Mr. THORNE. Mr. Anderson, my former statement holds true. You are absolutely justified, and it would be wrong if you did not consult them, but the point I am making, gentlemen, is that we are entitled to a hearing and to know what the evidence is that the other fellow presents. When we have a case before a court, the other fellow does not go into the private office of the court and discuss cases before the court. I am willing to admit that I have gone to commissions and have heard discussions of cases in private. The idea of a full hearing is one that has become established in our methods of procedure in this country.

Any method which fosters ex parte hearings, I claim, is absolutely wrong and unjust if it is in regard to a matter of large public consequence and a full hearing can with reason be granted. There are matters where a full hearing is impractical, because of the necessity to get immediate results, and that relates to operation, but in regard to the compensation which is to be paid, there is not the reason for this ex parte procedure.

The Interstate Commerce Commission has developed certain customs and rules and methods of procedure which tend to protect the interests of both sides. If you turn those over to a one-man

tribunal, without methods of procedure, without precedents, without any statutes even compelling him to grant a full hearing, I claim it will work disaster to many industries.

In this measure, you have provided as to the compensation between the railroads and the Government, that there be an arbitration before a disinterested body, an audit committee, and in case of disagreement, you have provided under the Constitution and the statutes, the hearing before the Court of Claims.

As to the rights in regard to the compensation going between the railroad companies and labor, you have provided—that is, Mr. McAdoo has provided for—a wage board to investigate and hear the matter at issue. I think that the shipper has just as much right as the railroad laboring man, or the railroad company, to a full hearing, on matters involving compensation going from a shipper to the railroad.

As to the other proposition in regard to the compensation to be paid the carriers, these valuation cases and rate cases are instructive only. We have no controlling precedent on the subject. We are not taking the property. We are taking the use during the war. We can not tell what the earnings of these railroads would be in the absence of Government operation. We can not say that they have demonstrated in any shape or form what that compensation would be in the absence of operation. You would still have the regulatory powers of the Government controlling the situation. They might reduce rates, or they might advance them. We have precedents only going to this extent. The commission has held that surplus earnings should not be capitalized, and you have the frank admission of two of the leading railroad presidents to that effect. In that connection, the precedent set by Great Britain, to which I referred the other day, is interesting to the extent that it did not capitalize surplus earnings, as here proposed. In Great Britain, according to the report made by the Legislative Reference Department, they did not even guarantee enough to take care of the dividends and interest. At first the public thought they were going to receive their payment of dividends in full, but this statement says:

The dividends fell off to an even higher extent than the net earnings apparently, because it was expected that net earnings might suffer still more through new demands from the railway unions.

I have in front of me a table, which shows the dividends paid by nine of the principal railroad systems in Great Britain since the war commenced. All but one of them show a slight decline in the dividend rate. This is one of the exhibits that I offered in evidence. The average decline in the dividend rate was about 0.24 of 1 per cent. However, there was a decline in the market value of railroad securities of approximately 32 per cent during that same time. This illustrates the fact it was not the railroad credit that caused the decline in market values. It is a reflection of the financial situation of the value of property. During that period the rate of return demanded by the public had gone up.

The bank rate in England during January-July, 1914, averaged about 3.52. During 1915 that increased to 5 per cent. In 1916, it increased to 5.95 per cent. After the entrance of America into the war, it declined to 5.2 per cent. The average rate on loans to stockholders doubled during the first year of the war.

Senator GORE. The average of what?

Mr. THORNE. Rate on loans to stock brokers, from 2.13 to 4.73. Then it remained practically constant, showing some variation, but not substantial, until we entered the war. Then there was a slight decline. Of course, if conditions go on in this country as they did in Great Britain, we may reasonably expect a very large increase in the money rate, especially during the first year of our entrance into the war. If conditions in the United States are as they have been in England, they will then seek a more constant level. If our rate on Government bonds should increase to 6 or 8 per cent, as it has in Europe, it will force the rate on industrial securities to a very high basis, regardless of what you may do as to this compensation.

If you grant an extraordinary compensation by act of Congress, there will be a temporary large advance in the price of railway securities, but they will inevitably decline no matter what you may do after an extended period of time has elapsed. So far as sustaining the money market, it is going to be physically impossible for you to maintain prices of securities, unless you have a constantly ascending scale of freight rates, increasing so rapidly as to completely offset this tendency in the general financial conditions. If your only object is to stabilize the returns to the holders of railroad securities it seems to me that that proposition is abundantly met by the suggestion that we have offered to you. If you guarantee their dividends on all securities outstanding December 31, 1917, they will be assured of the returns they have received in the past, and, added to that, you have the incentive for efficient service if you allow the surplus to be divided as has been suggested. As to whether or not a railway company will agree to that, of course, no one can state; but if the railroads are able to simply force Congress to accept what they think is right or fair, and your sole object is to avoid litigation, you will have to accept the proposition made by the carriers; but if the object is to render justice as between the parties in the case, it seems to me in these perilous times—the most perilous in the history of the United States outside of the Civil War—if you say to these people, "We will maintain your properties up to their present condition; that we will furnish you adequate funds for improvement and betterments; we guarantee your interest and dividends"; that you have rendered them full justice.

Most important of all, it is necessary that you shall respect the rights of the shipper of the country, as well as labor and as well as the railroad companies.

There is one proposition that I desire to mention very briefly in regard to the maintenance. Mr. Anderson, have you offered to the committee an amendment to the bill taking care of that?

Commissioner ANDERSON. Have you not seen the reprinted bill?

Mr. THORNE. No, sir.

Commissioner ANDERSON. You had better look at that.

Mr. THORNE. Does it provide for what you originally described?

Commissioner ANDERSON. No; I do not think it does, in terms. It provides that the President is authorized to make all reasonable provision for the maintenance of repair and renewals of the property and for the creation of reserve funds therefor, and for the depreciation thereof, to the end that at the termination of such Federal control either the properties shall be returned to the carriers in substantially as good repair and in substantially as com-

plete equipment as at the beginning of Federal control, or that payment shall be made therefor.

Mr. THOM. And there is no provision for the offset?

Commissioner ANDERSON. Yes, sir; there is. That is intended to be broad enough. "Reasonable provision," we think, is broad enough to cover a contract with each carrier which may achieve those results and put them all on an even keel. I think it meets the point you made. It is intended to.

Mr. THORNE. In regard to that, if you have two companies, both making operating expenses and profits, and one company is skinning the property, not maintaining it up to a reasonable standard, it is thereby showing an exaggerated net income. Unless you provide that that net income shall be correspondingly reduced you are going to discriminate between companies as well as against the Government, as it will be an injustice to the public. Here are two companies, A and B. They have net incomes of, say, a million dollars apiece, if they are both properly maintaining their properties; but one company is not maintaining it adequately, and consequently it shows a million and a half net. When it comes to deciding the standard return that company would be getting a million and a half annually, while the other company, which had been taking care of its property adequately, would only get a million. One must offset the other.

Gentlemen, I must apologize to you for the rambling discussion that I have been compelled to give you this afternoon. I have just returned from a trip to the West. The fact of my taking part in this argument this afternoon was unknown to me until 30 minutes before I stood before you.

In conclusion, I am going to read a set of resolutions that were adopted on January 24, two days ago, at Fort Dodge, Iowa, at a convention of the Iowa Grain Dealers' Association. A thousand delegates were present, and the following were adopted unanimously:

Whereas Congress is considering a war emergency action of vital importance to the Nation, and all such readjustments must safeguard the interests of both the shipper and the railroad, and subject each alike to national needs, just and fair economic principles must govern war-time and peace-time legislation. Such fairness and justice would be imperiled should Congress remove the jurisdiction now vested in the Interstate Commerce Commission over rates and charges. The shipper is entitled to a full hearing before a competent and disinterested tribunal. This is just as true of the compensation to be paid to the railroad by the shippers as the compensation to be paid by the Government to the railroads, or the compensation to be paid by the railroads to labor: Be it therefore

Resolved, That the Interstate Commerce Commission, in our judgment, should retain its present power in rate hearings and regulations. Its experience, information, and impartiality should not be sacrificed at this crisis, when it is most needed; if you substitute the sound judgment of one man, based on *ex parte* hearings, for the mature consideration of a disinterested tribunal like the Interstate Commerce Commission to decide great controversies which will inevitably arise during the war, it will be a calamity to American industry.

Further, be it resolved, On behalf of the 50,000 members of the cooperative elevator companies of Iowa, that we must sincerely protest against any measure which would authorize the President to guarantee dividends and interest on railroad stocks and bonds which have been paid in the past and in addition to that, to guarantee surplus earnings of American railroads during the most prosperous three-year period of their entire history, and then pay a return on the value of improvements built out of surplus. Such a measure would require the American people to build railroad properties for private companies and then pay a return on what we have built. Such a measure would cast an unjust burden of many millions of dollars annually upon the shippers of

he United States. Such a guarantee, according to unanimous decision of the commission, and according to the sworn testimony of representative railroad presidents themselves, would be unreasonable, unfair, and unjust. The rights of the shippers of the United States deserve your respect, just as much as those of labor or the railroads.

The CHAIRMAN. Mr. Anderson.

**ARGUMENT OF HON. GEORGE W. ANDERSON, MEMBER OF
THE INTERSTATE COMMERCE COMMISSION.**

Commissioner ANDERSON. Mr. Chairman and gentlemen, I must have talked to this committee at least 10 hours since these hearings began. It is difficult for me to believe that I now have any further knowledge or views which will aid you to any considerable extent in reaching a just and sound conclusion on what you shall report to the Senate and to the country.

The only excuse for a member of the Interstate Commerce Commission taking the part that I have taken here, is that that commission is in a broad, general, inaccurate, but yet fairly descriptive way, a standing committee, as it were, of Congress, appointed to specialize in transportation matters, and bound in the performance of its duty (particularly in time of war) to have views, and to be prepared to present them when the country has obvious, demonstrated, transportation needs.

It was that feeling which led me particularly in the light of certain matters not of common knowledge that I obtained during the previous year, when I had to deal in an official capacity with some of the conditions growing out of inadequate transportation facilities, to take up and make my special study of the question of Federal control during the war.

I have before me a memorandum, dated December 17, which was one of the memoranda that I prepared during the month beginning about November 18, and leading up to the proclamation which was completed in its final form on December 24, and was actually signed on the night of the 26th. In that memorandum, I had thrown together certain points which then seemed to be desiderata. That was at the end of a month of study of inclusion and exclusion. This bill was not evolved entirely by me. If I met a man on the street that I thought had an idea of any value I was ready to commit assault and battery on him to get that idea. But I had to do the greater part of the work myself, for other men were very much pressed with their own special work.

It is fair at this time to say to this committee that the result of the six weeks of exceedingly strenuous labor, before the bill was presented (it was printed, I think, on January 4) as tested by the hearings which have taken place since January 4, and by the fire which has been drawn in the committees and from counsel and from others, has been on the whole gratifying to me. That is, the essence of the plan we worked out, has stood, on the whole better than I ventured to hope, considering the fact that the problem was so new, so difficult, and that what was produced was produced in so short a time, under such pressure. By that, I do not mean to say that I have any notion that this bill is a perfect bill; that it may not be improved in form and in substance. But I do venture to say to this committee that practically no proposition has come

in here, or in before the House committee, not now represented in the redraft of the bill, which has not been fully considered and excluded on pretty matured and, I think, sound judgment, as an impracticable proposition.

Now, I have only a few things to add; those, I fear, will be mostly by way of repetition. One proposition, which at first blush is exceedingly attractive, is that instead of guaranteeing an average of three years' net earnings we should guarantee interest and regular dividends and a part of the surplus. Brief analysis will show you that that is destructive of the chief object of Federal control, even if otherwise not impracticable. The chief object of Federal control is to take these great transportation machines, now separate and competitive, with all of their corporate and personal machinery, as well as their transportation facilities, to coordinate them into one, making every man believe and feel and act as the representative of the Nation and not as the employee of a separate corporation.

Now, the proposition made by Mr. Plumb—and, as I understand, it is essentially the proposition made by Mr. Thorne—that the basis of compensation should be interest, regular dividends, and a division of the surplus. That makes a surplus profit the incentive. It puts, as I indicated in a question asked this afternoon, the entire official force still remaining with the carrier corporation—and to a considerable degree in the control of that carrier—at work obtaining traffic, getting cars, interested in rates, doing substantially all of the things that they have done hitherto, in order to make a good showing for that particular corporation. That is not Federal control, gentlemen. That is separate, private, competitive control, utterly inconsistent with the fundamental theory upon which you proceeded in your act of August, 1916, and under which the President proceeded in acting under that law. I think it must be rejected. If you reject that proposition, there is practically nothing before you impugning the fairness of the three-year average net-earnings basis as being on the whole a plain, available, practical method of determining just compensation and as the basis of a trading probability between the President and the respective carriers.

No one has any doubt that it is desirable that there should not be a mass of litigation in such amount as never was seen in the history of the country, and that there should be terms reached as speedily as possible between these great carrier corporations and the United States Government. There is no doubt that that is desirable on every ground. In order to achieve that result, the carriers ought not to be offered undue and unjust excessive compensation. I absolutely agree to that. But they should be afforded such just and adequate terms that a set of intelligent and patriotic citizens would be ashamed, if otherwise tempted to refuse them. And I do not intimate that it is going to be necessary to appeal to the sense of patriotism and shame in order to induce the body of security holders, the owners of these properties, or their representatives, to deal justly and fairly with the United States Government. I do not mean by that either to say that I should be able to adopt their views fully as to justice and fairness. We are, as St. Paul said, prone to "think of ourselves more highly than we ought to think," particularly when we have something to sell. That is said to be peculiarly applicable

to lawyers when they are making out their bills to their clients. Admitting that as against our profession, I am permitted to suggest it as against the holders of railroad securities, who are now in the position of charging the Federal Government for the use of their property. So I say that section 1, in its essence, commands general approval. Judge Cowan's plan has the same inherent vice. It won't work; that is all there is to it. It won't work. It won't settle anything.

Now, a good share of the discussion, much of which has been very interesting, turns upon the question of surplus—I might digress to tell you that you remind me, in your patience in listening to evidence, of rather a famous ruling, and which I have told several times, of one of the judges of our Supreme Court, before whom, years ago, I tried a land fraud and promotion case. Finally we reached a stage where we put in at great length statistical evidence and masses of figures. Then the other side offered some evidence to which I objected strenuously. The judge looked at me sternly and apparently with some animosity and said, "What is the objection, sir?" I said "It has no relevancy or competency to the trial issue." He looked at me more sternly and said: "Very likely you are right, sir, but it is interesting; I will receive it."

Now, a good deal of the evidence you have been receiving here, gentlemen, has been admissible solely because it was interesting. It had nothing to do with the issue that you are trying to determine as to the legislation that you shall report to Congress, except as general knowledge and information about any great subject—the relations of the carriers in their original charters or their conditions as indicated by their statistics—may give you a somewhat richer and fuller mind.

But to come back from my digression to the point that a good share of the discussion has turned on the surplus. Now I think I know something about the conflicting theories concerning the surplus. So far as I know, I wrote the only opinion (there may have been others) but so far as I know I wrote the only opinion of a public service commission in this country which laid down as the basis of a decision the correct principle as to surplus. That case is the Middlesex and Boston rate case, decided by the public service commission of Massachusetts in October, 1914. (2 Mass. P. S. C., p. 41.) As I have been charged, and with good foundation, of drafting a war emergency bill which contains certain provisions inconsistent with my real views as to the sound method of dealing with surplus, I want to read about four or five sentences into this record, indicating what my views are when I am not dealing with war emergency legislation. In that case, where I was construing Massachusetts statutes as the basis for rate making, I wrote this, and my associates assented to it:

Under the Massachusetts law capital, honestly and prudently invested, must, under normal conditions, be taken as the controlling factor in fixing the basis for computing fair and reasonable rates; that if there is mismanagement, causing loss, such loss must be charged against the stockholders legally responsible for the mismanagement.

In the paper I have before me, reprinted from Volume I, No. 3, of the *Utilities Magazine*, is an article which I wrote in which I undertook to point out that there should be legislation establishing a sound policy for dealing with surpluses. In this I indicated that most of our difficulties as to this surplus have grown out of the fact that our legislatures, National and State, have left the courts floundering in

a morass of chaotic corporation laws without any rule laid down, as it should have been, by the law-making bodies as to the basis of a return on the capital they invite into this sort of public service. This lack compelled the courts in the performance of their duties as to anticonfiscation to make law that the legislature ought to have made.

What we ought to have (not "looking back at the past which is gone") but dealing with our future policy as to surplus, is a statute provision made applicable to the Interstate Commerce Commission, also to the States commissions, saying to the regulating commissions something like this:

"The commission shall, for the purpose of determining whether the aggregate returns derived from rates, fares, and charges is sufficient to yield a reasonable compensation for the service that is rendered by any public utility, take as the controlling factor under normal conditions for computing the basis for such rates, the amount of cash capital paid into the treasury of such utility company for securities lawfully issued; provided that the proceeds of such securities shall have been used honestly and with reasonable prudence in providing the facilities of such utility."

Now, I only want to add that the views that I expressed in the Middlesex and Boston rate case, and the views which are set forth in that article as to surplus, remain unchanged as to what are the requirements of justice and as to what is the line of sound public policy, anything in the act that I presented to these committees to the contrary notwithstanding.

But, gentlemen, we are dealing in war times, with a war emergency, with conditions without precedent, and I hope with conditions that none of us will ever live to see repeated. It is, to use the hackneyed phrase, "A condition and not a theory" that now confronts us. It is "the condition of using the transportation facilities, as has been so many times said in these hearings, as a unit, so as to get the last ounce of transportation service out of them; "a condition" of necessary stabilization of the security market. It is no time for Senator Cummins and myself, who hold very similar views on many points raised here, or for Mr. Plumb, or Mr. Thorne, who are regarded as I am—somewhat radical—now to ask Congress to listen to our pet theories. It is no time for us to be arguing Mr. Thom out of his unsound views. It would take too long a time to describe the unsoundness of his views.

Senator CUMMINS. Inasmuch as you mentioned me, why should not my pet theories be recognized as much as those of Mr. Thom.

Commissioner ANDERSON. They should, sir. If theirs are recognized, far more ought ours to be recognized. Ours ought to be recognized because ours are right and theirs are wrong; but what I say is that I will not "recognize" Mr. Thom's pet theories, if I can help it, and I think we have helped it in this bill. I want to be met halfway, however, Senator. I undertook, when you pointed out that the bill went unnecessarily far toward their theory as to surplus to eliminate the recognition and to add at the end of the bill the caveat which I think saves the whole question for future discussion after the war. After the war we will have a good-natured war on all of those theories and air all of our pet notions.

There is little more that I care to say. Perhaps I ought to say a word about rate making. I very reluctantly came to the view that you must leave the ultimate power of rate making in the President. That power ought as an administrative matter to be exercised by the President through the machinery of the interstate and the State commissions, except under very unusual circumstances, I venture to say it will be so exercised. But I have asked various of the gentlemen who have insisted that the power of rate making—the real power of rate making—ought to be revested in the Interstate Commerce Commission, to draw a statute, which, they themselves, would say did not improperly cut down the war power, and yet put the rate making power back into the Interstate Commerce Commission, and no gentleman has yet presented to me a draft of a statute that he himself would favor. It is very easy to criticize. I have had a great deal of it in the past six weeks. It is very easy to deliver yourself of oratory and denunciation. I would much prefer, like my brother Plumb, to go to bed nights, read the Merchant of Venice and then get up and talk about Shylock and the bond and Shakesperian bloodletting, than to try to draw a bill to meet a problem like this. But while he has been reading the Merchant of Venice, I have had that bill at the head of my bed and waked up nights making annotations on it. I wish he had been making annotations on that bill instead of working out beautiful pieces of oratory, ornamenting his oratory from the Merchant of Venice and from Shylock.

I claim only two merits: One is reasonable industry in acquiring facts. The other is willingness to face facts when I know what they are. I have no great ability in construing facts, but those two things, i. e., acquiring and facing facts, I have tried to do. I venture to say to you gentlemen that you have had little help from those who have come here and delivered themselves of great masses of statistics, or emitted large volumes of winged words. Their proceeding does not help to draw an accurate statute, which will deal in a practical way with war conditions such as we now face.

Senator WATSON. Why do you think the power to fix rates should be reserved to the President, instead of to the Interstate Commerce Commission?

Commissioner ANDERSON. Because, sir, you can not deal with the "possession, control and utilization" of a great, complicated transportation system, in time of war, make it effective through redistribution of rolling stock, provide for rerouting, for changed and changing conditions, without needing (as was illustrated the other day in the case of the demurrage rates), to have the ultimate power to make rates, found necessary for war purposes, accrue to the President. I repeat that he ought not to use that power, except in rare instances; orders have already been made to that effect; you gentlemen doubtless have in mind that the proclamation itself contains the provision that "until and except so far as the President shall otherwise by general or special order provide," that rate making shall continue as hitherto. That is the safe line. It is a great power. It is an appalling power, to say that you have left in the hands of one man the power to make rates. But I do not believe there is any escape from it.

Senator WATSON. It is a legislative function purely, is it not?

Commissioner ANDERSON. Yes.

Senator WATSON. And the power to manage these railroads is managerial—it is administrative. Now, is there some particular reason why the Interstate Commerce can not discharge its duties as a general legislative body and determine these rates?

Commissioner ANDERSON. In time of war, yes. The President is responsible for financial results. He is responsible for rates over new routes. He is responsible for rates which are being made on substantially different theories from those which have hitherto controlled.

Senator WATSON. But under your theory, the surplus money becomes the money of the Government, and goes into the Treasury. How would that interfere with the right of the President to manage the money?

Commissioner ANDERSON. It would interfere with his right to get money to manage.

Senator WATSON. In other words, you claim if he wants more money to increase the revenues in the operation of railroads, he could raise the rate?

Commissioner ANDERSON. Yes, he could. If he found the railroads were not self-supporting, in my opinion it would be the duty of the President to make them self-supporting.

Senator UNDERWOOD. You do not suppose for a minute we can confer the taxing power, invested in Congress, in the President of the United States?

Commissioner ANDERSON. I do not think you can.

Senator UNDERWOOD. That is where your argument leads you to.

Commissioner ANDERSON. I do not think it does. I agree that the distinction is fine, but I think that the distinction is there. It is no more difficult than you have already faced. I think it was originally thought to be an insuperable difficulty when it was proposed to delegate to the Interstate Commerce Commission (what is commonly called) the rate-making power. The rate-making power really inheres in Congress. In theory of law, you, Congress, make "reasonable rates." You delegate to us, the Interstate Commerce Commission the task of figuring out "reasonable rates," the details only. I should have no objection to saying "The President shall make in time of war just and reasonable rates." You might authorize him to use (as the bill does now) the machinery of the Interstate Commerce Commission, so far as he could. I stated here the other day, Senator, that my belief is that the same obligation to make just and reasonable rates, as between shipper and shipper, and as between the railroads and the masses of the shippers and passengers, should be used by the President while the roads are in the hands of the President as is the express provision of the statute applicable to the Interstate Commerce Commission.

One point was raised here yesterday, which I think well taken. It was pointed out, I think by Senator Robinson, that under section 1 of the bill it is stated that certain carriers had been taken over; that under section 14 it is provided that that control shall continue until Congress shall otherwise determine; that these two provisions would prevent the relinquishment of any property during or after the period of the war, even though it was not thought necessary or desirable to hold for Federal purposes, and if the owners preferred to have this property back. I think that result might be avoided by inserting

in section 14, line 10, after the word "otherwise," something like this:

Provided, however, That the President may at any time relinquish control.

Senator WATSON. Where would you put that in?

Commissioner ANDERSON. Section 14, line 10, after the word "otherwise." Change the period to a semicolon and insert: "Provided, however, that the President may at any time relinquish control of all or any part of any system of transportation, further Federal control of which the President shall deem not needful or desirable"; and it might be that you should add to that substantially this:

No right to compensation or return shall accrue from and after the date of such relinquishment.

That would leave a situation in which some of these smaller carriers that ought not to be kept under Federal control could be relinquished, as is contemplated by the original proclamation, while, at the same time, stabilizing the general situation, as is contemplated in section 14.

As to section 14, that, I am not going to repeat the arguments: I will say, however, that I believe the trend of thought among people who have been giving this section fair and dispassionate consideration is toward the conclusion that the Secretary and the rest of us have reached, as we have studied the situation more and more thoroughly. All of us started, I think, with the assumption that this Federal control should end, either with the war or shortly thereafter. All of us, as we have analyzed the situation, have come gradually to the conclusion that the responsibility for conserving and constructive legislation must be taken by the Congress, after the war; and that there ought not to be any stop watch on them.

Mr. Thom said one thing which I think calls for comment. He said there might be a political campaign on the question of public ownership, or on returning these carriers to individual control. Very likely that is true; but you can not prevent it, if the American people want to have a political campaign on that issue. The real question is this: Is it better for the country, better for the financial interests of the country, better for the security holders, that Mr. Thom represents here that that campaign should be carried on under a status which guarantees them a fair return until we have fought out the issue and determined what the future status is to be? I say it would be dangerous to have a political campaign on Government ownership, or continued private ownership, with a possibility (and perhaps a reasonable probability that a discordant Congress would refuse to extend the time limit—so that chaos might supervene—perhaps in the very midst of a political campaign on that issue. We can not dodge that issue any more than we could dodge this war, or than you can dodge the liabilities that have accrued out of this war. Let us face it; and let us face it with as much safety as we can now provide for. That is all I have to say.

I thank this committee most heartily for the great courtesy you have shown me in listening to me at such length.

Mr. THORNE. Before you adjourn, I would like to say, in answer to Mr. Anderson's question about tendering any draft of any section

of this bill, that the House committee has requested, and I have read the draft of some sections, that of course we have not had time to present our views in the form of the draft amendments to the bill, and that will be done probably Monday.

Mr. THOM. Mr. Chairman, before you adjourn, I have some amendments—some perhaps verbal and some perhaps more substantial—that I would like to have an opportunity of presenting. I will give a copy of them to the representative of the men. I would like to know about what would be the pleasure of the committee in respect to how that should be accomplished.

The CHAIRMAN. You can just file them with the clerk and he will give them to the committee.

The committee stands adjourned until 10 o'clock Monday morning.

(Whereupon, at 5.25 o'clock p. m., Saturday, January 26, 1918, the committee adjourned until Monday, January 28, 1918, at 10 o'clock a. m.)

APPENDIX.

INTERSTATE COMMERCE COMMISSION,
Washington, January 29, 1918.

Hon. E. D. SMITH,
Chairman Committee on Interstate Commerce,
United States Senate, Washington.

MY DEAR SIR: When you indicated to the chairman of the commission that your committee would like to hear from us with relation to Senate bill 3385, the members of the commission had not seen the bill in the form then proposed by its authors, and it was understood that the commission would take the bill up for consideration and prepare to present its views. Our chairman is, and for a few days has been, confined to the house. We understood that in talking with you he suggested that our views would be submitted in writing, to be supplemented by oral statement as the committee might desire. Acting on that understanding, and in his absence, I submit for the commission the following:

The commission's special report to the Congress expressed the firm conviction that unified control and operation of the railroads of the country was essential. Such control was brought about through the proclamation of the President. The commission is in full and complete sympathy with the purposes of the bill referred to. It believes that early legislation effecting those purposes is highly desirable. It has neither desire nor disposition to obstruct, hinder, or delay action along those lines. It has neither desire nor disposition to view the bill, or any of its features, in a narrow or hypercritical way, or to analyze it in a narrow, contentious, or captious spirit.

It submits the following suggested changes in the bill, in outlining which the committee reprint is used for reference:

In section 1, page 4, line 16, we suggest inserting the word "operating" after the word "making." The act to regulate commerce authorizes the commission to require reports from the owners of railroad properties, although such owners may not be operating the property. There are, therefore, corporations that maintain their corporate entity, that make returns to the commission, and that own railroad properties which are leased to others, in the operation of which the owning corporation has no voice. Presumably such corporations are not contemplated in this legislation.

For the purpose of using terms which have a definite meaning in railroad accounting we suggest that on page 5, lines 6 and 7, the word "improvements" be changed to "betterments," and that in line 7 after the word "retirements" the words "or road extensions" be inserted. For the same reasons we suggest striking out from line 13 the words "and improvements" and inserting in lieu thereof "betterments or road extensions."

In order to harmonize with other parts of the act we suggest inserting in line 14 before the word "commission" the words "Interstate Commerce."

The financial results from operation of railroad property can be very materially changed, dependent upon the expenditures for maintenance and the charges for depreciation. We understand the intent is that the Government shall agree with the railroads that their properties shall be maintained during the period of Federal control in substantially as good condition as when taken over. A precise inventory of the property of each carrier and of its condition at the time it passes into Federal control and a similar inventory at the time the property may be returned to its owners would be almost impossible undertakings. A substantially accurate measure of the character of maintenance of the property would be the amounts expended on it during the period of Federal control as compared with the amounts expended upon it during the period of three years ended June 30, 1917, which is taken as the basis for determining the just compensation to the carriers, making due allowance for changes in the

cost of materials and supplies and of labor. Manifestly, it would be unfair to the Government for a carrier to charge during the period of Federal control large sums for depreciation of its properties unless during the period immediately preceding Federal control which is taken as representative it has made similar charges. For these reasons the commission suggests the propriety of inserting the following paragraph between lines 16 and 17 on page 6:

"Every such agreement shall also provide that during the period of Federal control each carrier shall charge to operating expenses for maintenance of the several classes of its property sums varying by not more than the amounts made necessary by changes in the prices of materials and wages of labor, from the sums determined by the respective average charges for maintenance during the three years ended June 30, 1917: *Provided*, That if on account of shortage of labor and materials the carrier can not reasonably expend for maintenance the sums thus determined, such sums shall nevertheless be charged to operating expenses and held for the purposes specified until such maintenance work can reasonably be undertaken: *And provided further*, That the President may authorize additional charges to operating expenses for maintenance when they are occasioned by conditions beyond the carrier's control, and that during the period of Federal control each carrier shall charge to operating expenses for depreciation on its several classes of property sums not exceeding the sums determined by the respective average rates charged by it for depreciation of such classes of property during the three years ended June 30, 1917, provided that the President may, for good cause shown, authorize the use of different rates."

In harmony with the suggestion just made the words "for the maintenance, repair, and renewals of the property and for the creation of reserve funds therefor and for the depreciation thereof to the end" should be stricken out from lines 18, 19, and 20.

In order to make more clear what we understand to be the purpose of the provision we suggest that in section 2, page 7, line 21, the words "the estimated" be stricken out and the word "an" be inserted in lieu thereof, and that following the word "compensation" in line 22 the words "estimated by him" be inserted.

To correct what seems to be a typographical error, the word "thereof" in line 24 should be changed to "hereof".

In section 3, page 8, line 4, the word "That" should be inserted before "and". In harmony with the course which has long been pursued in referring matters to or placing duties upon the Interstate Commerce Commission, we suggest that in line 9 the word "alone" be inserted after the word "thereof" and that the words "without additional compensation" be stricken out from lines 9 and 10 as superfluous.

In line with this suggestion, the words "or any board of referees to which any such cases shall be referred" should be stricken out from lines 16 and 17.

It would seem that the meaning would be more clear if a comma were inserted after the word "basis" in line 22.

In section 4, page 9, line 10, the word "That" should be prefixed to the paragraph, and, for reasons hereinbefore explained, the word "betterments" should be substituted for the word "improvements" in line 14, and the words "and upon the cost of road extensions," should be inserted after the word "carrier" in line 15.

In section 6, page 10, line 4, it is suggested that the words "net operating revenue" be inserted instead of the words "operating income."

For the purpose of using more accurate terms and terms which have a definite meaning in railroad operation and accounting, we suggest that the words "improvements, engines, rolling stock" be stricken out from lines 9 and 10 and the words "motive power, cars" be inserted in lieu thereof, and that the word "improvements" be stricken out from line 11 and the words "motive power, cars" be inserted in lieu thereof.

For the same reasons we suggest that the words "and improvements" be stricken out in line 16 and the words "betterments or road extensions" be inserted in lieu thereof, and that the same change be made in line 19.

On page 11, for the reasons already explained, we suggest striking out from line 2 the words "or improvements" and inserting in lieu thereof the words "betterments or road extensions."

To more definitely and broadly carry out the evident intent of section 8, page 12, we suggest that the words "utilize the personnel and facilities of the Interstate Commerce Commission and call upon members of such commission or any of its employees or employees of" be stricken out in lines 8, 9 and 10.

that the words "call upon" be inserted in line 7 after the word "may"; and that the words "commission or board" be inserted after the word "department" in line 10, making this part of the sentence read "and may call upon any department, commission, or board of the Government for such services as he may deem expedient."

In line 11 the final word in the line, "such," should be stricken out, and in order that no injustice may be done to any minor employee the words "except as now permitted by law" should be inserted after the word "services" in line 13.

In section 8, page 12, the word "That" should be prefixed to the paragraph.

The purpose to deprive injured employees of rights now conferred upon them by law may be doubted, and on the strength of this thought we suggest that the words "if availed of" be inserted after the word "shall" in line 14, page 13.

It would seem entirely proper to insert the word "such" after the word "all" in line 22.

In section 13, page 16, line 17, the word "That" should be prefixed to the paragraph.

A broad question of public policy seems to be involved in section 5 of the bill. For the reasons stated in the opening of this communication, the commission refrains from offering any proposed changes in this section, simply calling attention to the fact that while manifestly there should be a provision which will prohibit capitalization of surplus heretofore accumulated but already expended there is room for argument that if the Government takes the use of the property upon an agreed compensation, the owners of the property to whom that compensation is paid should have the right to distribute it.

Large questions of public policy are involved in that part of section 10 following the semicolon in line 2, page 14, and ending with the word "conferred" in line 6, and also in section 11, page 14, beginning with the words "in so far" in line 2 and ending with the words "President" in line 23; but for the reasons stated the commission refrains from suggesting any changes in these provisions, contenting itself with pointing out the broad delegation of power and the far-reaching effect of the language used.

I should add that Commissioner Anderson, who participated in drafting the original bill and amendments thereto subsequently proposed by him, and who has been heard at length by your committee, disagrees with the insert suggested by the commission in section 1 relative to charges for maintenance and depreciation. He disagrees with the other members of the commission with regard to the changes which we have suggested in section 8. He agrees with the other changes herein suggested.

I repeat that we are in full sympathy with the purposes of this legislation and the reasons advanced for early action thereon. The amendments that have been made to the original bill, as per the committee print to which I have referred, render it unnecessary for us to express views which we would have desired to express if those amendments had not been proposed.

I again disclaim any disposition on our part to obstruct or delay action on this measure, and therefore, while if desired by your committee a member of the commission will appear to further explain any of the changes which we have suggested, we do not request such opportunity.

Yours, truly,

EDGAR E. CLARK, *Acting Chairman*

INTERSTATE COMMERCE COMMISSION,
OFFICE OF THE CHIEF COUNSEL,
Washington, January 21, 1918.

NO. 173. OPINION OF CHIEF COUNSEL IN RE POWER OF STATES TO TAX RAILROADS UNDER PRESENT FEDERAL CONTROL AND UNDER BILL H. R. 8172.

The question presented is, To what extent, if any, does the Federal control of systems of transportation now being exercised or contemplated under the bill H. R. 8172 affect the power of the States to tax railroads?

The States have the power of taxation as a necessary attribute of sovereignty. In *Union Pacific Railroad Co. v. Peniston* (18 Wall., 5) the court, referring to the taxing power of a State, said, at page 29:

" * * * and that it may be exercised to an unlimited extent upon all property, trades, business, and avocations existing or carried on within the territorial boundaries of the State, except so far as it has been surrendered to the Federal Government, either expressly or by necessary implication. * * *

In *McCulloch v. Maryland* (4 Wheat., 316), the court said, at page 429:

" * * * All subjects over which the sovereign power of a State extends are objects of taxation, but those over which it does not extend are, upon the soundest principles, exempt from taxation."

In *Coe v. Errol* (116 U. S., 517) the court said, at page 524:

" * * * We take it to be a point settled beyond all contradiction or question that a State had jurisdiction (for taxation) of all persons and things within its territory which do not belong to some other jurisdiction, such as the representatives of foreign Governments, with their houses and effects, and property belonging to or in the use of the Government of the United States."

A State may not tax property of the United States, *Van Brocklin v. Tennessee* (117 U. S., 151), nor may it tax the United States in the exercise of its governmental functions. (*McCulloch v. Maryland*, 4 Wheat., 316; *Provident Bank v. Billings*, 4 Peters, 514; *Provident Institution for Savings v. Massachusetts*, 6 Wall., 611; *Farmers Bank v. Minnesota*, 232 U. S., 516; and *Choctaw O. & G. R. Co. v. Harrison*, 235 U. S., 292.)

A State may not levy a direct tax upon interstate commerce. In *Kansas City Railway v. Kansas* (240 U. S., 227), the court said, at page 231:

"It must be assumed, in accordance with repeated decisions, that the State can not lay a tax on interstate commerce 'in any form' by imposing it either upon the business which constitutes such commerce, or the privilege of engaging in it, or upon the receipts as such derived from it." (*State Freight Tax Cases*, 15 Wall., 232; *Philadelphia & Southern S. Co. v. Pennsylvania*, 122 U. S., 336, 338, 344; *Leloup v. Mobile*, 127 U. S., 640; *Lyng v. Michigan*, 135 U. S., 161, 166; *McCall v. California*, 136 U. S., 104; *Galveston, Harrisburg, etc., Railway v. Texas*, 210 U. S., 217, 228; *Western Union Telegraph Co. v. Kansas*, 216 U. S., 1, 36, 37; *Pullman Co. v. Kansas*, 216 U. S., 56, 65; *Meyer v. Wells Fargo & Co.*, 223 U. S., 298; *Baltic Mining Co. v. Massachusetts*, 231 U. S., 68, 83.)

No State may levy a tax on the gross income of any interstate carrier. (*Galveston, Harrisburg, etc., Railway Co. v. Texas*, 210 U. S., 217.) Nor may a State levy a tax upon the receipts from interstate transportation. (*Philadelphia Steamship Co. v. Pennsylvania*, 122 U. S., 326.)

On the other hand, a State may tax the physical property of an interstate carrier. (*Postal Telegraph Co. v. Adams*, 155 U. S., 688; *Western Union Telegraph Co. v. Taggart*, 163 U. S., 1; *Union Pacific Railroad Co. v. Peniston*, 15 Wall., 5; *Thomson v. Pacific Railroad*, 9 Wall., 579; *Massachusetts v. Western Union Telegraph Co.*, 141 U. S., 40; *Central Pacific Railroad v. California*, 162 U. S., 91, 125; *Western Union Telegraph Co. v. Attorney General*, 125 U. S., 530.) So also a State may levy a corporation tax, even though such corporation may engage in interstate commerce. (*Kansas City Railway Co. v. Kansas*, 240 U. S., 227; *St. Louis Southwestern Railway v. Arkansas*, 235 U. S., 350.)

Applying the general principles above announced to the railroads under the Federal control now being exercised or contemplated under the bill H. R. 8172, it is clear that under the present control by the Director General and under the proposed bill the railroads remain the property of the owners. The operation of the railroads by the United States upon an agreed basis of compensation need not interfere with State taxation on the physical property of such railroad any more than the leasing of a building in a State by the United States would necessarily operate to suspend State taxation against the owner of the building. This conclusion, of course, would not apply to any taxation which would amount to an interference with interstate commerce or to an attempt to tax the Federal Government in carrying on any function within its constitutional powers.

No State may levy any tax on the United States, but a State, within reasonable limitations, could continue to tax the property owned by a railroad, even though that property be leased to or operated by the United States. Such a tax should be upon the property of the owners of the railroads and should not be such as to interfere with the United States in carrying on its transportation functions.

In *Commonwealth v. Kianiconick & F. S. R. Co.* (104 *Southwestern*, 20, 31 *Kentucky Law Report*, 859) it was held that a railroad company, although

its road is operated by another company, still owns its line of railroad and has not parted with any franchise granted to it and is liable to a franchise tax.

In *Union Pacific Railroad v. Peniston* (18 Wall., 5), referred to above, the court said, at pages 31 and 32:

"* * * the Union Pacific Railroad Company was created to subserve, in part at least, the lawful purposes of the National Government; * * *. They (charter provisions) all look to a purpose of Congress to secure an agency competent and under obligation to perform certain offices for the General Government. Notwithstanding this, the railroad and telegraph line are neither in whole nor in part the property of the Government. * * *"

Admitting, then, fully, as we do, that the company is an agent of the General Government designed to be employed, and actually employed, in the legitimate service of the Government, both military and postal, does it necessarily follow that its property is exempt from State taxation?"

Answering this question, the court said, at page 36:

"It is, therefore, manifest that exemption of Federal agencies from State taxation is dependent not upon the nature of the agents or upon the mode of their constitution or upon the fact that they are agents, but upon the effect of the tax; that is, upon the question whether the tax does in truth deprive them of power to serve the Government as they were intended to serve it or does it hinder the efficient exercise of their power. A tax upon their property has no such necessary effect. It leaves them free to discharge the duties they have undertaken to perform. A tax upon their operations is a direct obstruction to the exercise of Federal powers."

In *Thomson v. Pacific Railroad* (9 Wall., 579) the United States was to receive 5 per cent of the net earnings of the railroad. It was claimed in opposition of the power of the State to tax the property of the railroad that such tax by the State would hinder and embarrass the railroad in the performance of its obligations and duties to the United States. In upholding this tax, the court said, at page 591:

"No one questions that the power to tax all property, business, and persons within their respective limits is original in the States and has never been surrendered. It can not be so used, indeed, as to defeat or hinder the operations of the National Government; but it will be safe to conclude, in general, in reference to persons and State corporations employed in Government service, that when Congress has not interposed to protect their property from State taxation, such taxation is not obnoxious to that objection."

The United States possibly might prohibit the States from levying taxes upon railroads while under Federal control. *Home Savings Bank v. Des Moines* (205 U. S., 503, 513), *Union Pacific Co. v. Peniston* (18 Wall., 5, 37).

The United States has prohibited State taxation of national banks except upon its real estate and upon the shares of capital stock owned by stockholders. (Sec. 5219, Revised Statutes.) This statute has been repeatedly upheld. (*People v. Weaver* (100 U. S., 539), *Rosenblatt v. Johnston* (104 U. S., 462), *Boyer v. Boyer* (113 U. S., 689), *Owensboro National Bank v. Owensboro* (173 U. S., 664), *Bank of Louisville v. Stone* (174 U. S., 432), *Louisville v. Third National Bank* (174 U. S., 435), *First National Bank v. Albright* (208 U. S., 548), *City of San Francisco v. Crocker, etc., Bank* (92 Fed., 273).

It is to be noted that H. R. 8172, instead of prohibiting the imposition of taxes by the States upon railroads while under Federal control, distinctly recognizes the power of the States to impose such taxes. Under the bill taxes other than those assessed by the United States for the three years ending June 30, 1917, can be charged to operating expenses and included in the computation of the standard return due the carriers.

In my opinion, especially in the absence of prohibition of Congress, the States have power to tax the property of railroads while such railroads are under Federal control. This power is subject to the same limitations as before; that is to say, it must be reasonably exercised and must not be exercised in such a manner as to interfere with interstate commerce or as to be a direct tax upon the United States in exercising its functions of government. Bill H. R. 8172 as it now reads does not prohibit State taxation of railroads while under Federal control, but, on the contrary, accepts and consents to the exercise of that power by the States during the period of such control.

JOS. W. FOLK,
Chief Counsel.

UNITED STATES SENATE,
Washington, D. C., January 24, 1918.

HON. ELLISON D. SMITH,
Chairman Committee on Interstate Commerce,
United States Senate, Washington, D. C.

DEAR SENATOR SMITH: While the "bill to provide for the operation of transportation systems while under Federal control, etc." (S. 3385), contains many items which are of great importance, I desire to call especial attention to, and urge the adoption of, certain provisions contained in section 6, and to suggest some amendments which I believe will greatly increase the effectiveness of the measure.

The first paragraph of section 6 appropriates \$500,000,000 as a revolving fund and specifies certain objects to which moneys derived from this fund may be devoted. While the language of this paragraph might possibly be considered broad enough to include carriers by water, as well as carriers by rail, the final paragraph of section 6 specifically provides that the President may expend from the revolving fund such an amount as he may deem necessary or desirable for the promotion of transportation by water, and it is the vital importance of this provision of the bill for which I desire to urge the especial consideration of the committee.

The utter inability of the railroads alone to meet the transportation needs of the country under existing circumstances has been dramatically, even tragically, made evident during recent weeks. The health officer of Philadelphia stated that there was illness in 10,000 homes in that city because of lack of fuel. In New York City people have been found frozen to death, not only among the poorer classes in the tenement district, but in at least one instance reported in the press where it was evident that lack of funds was not to blame. Indeed, there were cases reported in which multimillionaires had to abandon their palatial homes for lack of fuel and seek refuge with relatives or friends who were more fortunately situated in this respect.

Because we are at war and the continuous operation at the highest possible speed of all factories producing munitions and other war supplies is a matter of the most vital necessity, but it was recently stated that half of the steel mills in the Pittsburgh district were idle, half of the blast furnaces had their fires banked, and half of the great army of workmen engaged in this vital industry were unemployed because of lack of fuel, and the total suspension of all operations in this fundamental industry was imminent.

We have been told that one of the fundamental necessities for war purposes, if not the most absolutely necessary of all, is ocean tonnage, and extraordinary efforts, backed by unheard-of appropriations, have been made to increase ship-building in the United States. Yet, if a recent press report is accurate, no less than 213 ships, loaded with munitions and provisions urgently needed by our allies and our own Army in France, were lying in the harbor of New York one week ago waiting for bunker coal, without which they could not sail. At the same time every dock and wharf and warehouse in greater New York was filled with materials waiting opportunity for shipment, and every siding for hundreds of miles on every railroad leading out of New York was clogged with cars which could not be moved, among these being no less than 45 miles of coal-laden cars on one railroad alone.

It is, of course, true that snowstorms and bitterly cold weather have had something to do with increasing traffic congestion during the recent weeks, but that the wintry weather is not chiefly responsible is indicated by the fact that the net car shortage was 148,627 on the 1st of May, 1917, after the winter was over, and 140,012 on the 1st of November, before the winter began.

What can be done on a waterway when it has been improved and given a dependable channel is shown by the fact that in the calendar year 1916 a total of 12,875,673 tons of freight were moved on the Monongahela River. Eighty-one per cent of this was coal, and practically all of it was material which could be moved in open-top cars. The capacity of the average coal car is 50 tons, and it would have taken no less than 257,513 cars to move this freight which was carried by the Monongahela.

Unfortunately the rivers of the United States which have been sufficiently improved to have dependable channels are so few in number that they can be counted on the fingers of one hand, but even an uncompleted river may carry a considerable tonnage, as is shown by what has been done on the Ohio River during the past year. By the creation of a series of artificial flood waves through the lowering of dams on the upper Ohio and its tributaries during the

last season of low water 300,000 tons of coal were floated from the Great Kanawha River to cities on the Ohio as far down as Cincinnati. It would have taken 6,000 cars to move this amount of coal and 300,000 tons of coal is enough to operate scores of factories or to warm the homes of more than 200,000 people for many weeks, even during the bitter weather of this unusual winter.

The extraordinary traffic congestion, with the resultant losses financially, the sickness and death, and the danger to the cause for which the United States and its allies are fighting was the reason advanced by the Fuel Administrator for the extraordinary order recently issued by him, and the Director General of Railroads has imposed on three of the greatest railroads east of the Ohio River an absolute embargo on everything except food, fuel, and vital war necessities until such time as the congestion has been relieved. It would seem to be unnecessary to say more to emphasize the vital importance of the transportation question and the imperative necessity of supplementing the inadequate facilities of our railroads by using our waterways to the last possible limit of their capacity, and it seems to me beyond all doubt or question that legislative authority should be given for such use of water transportation.

Because the authority to provide terminals which is contained in the first paragraph of section 6 is coupled with the authority to provide engines, rolling stock, and other necessary equipment, this provision apparently applies only to carriers by rail. The last paragraph of section 6 gives authority for the "purchase, construction, or utilization and operation of boats, barges, tugs, and other transportation facilities on the inland and coastwise waterways." Proper terminals are just as essential to the efficient and economic operation of carriers by water as of carriers by rail, and while possibly the words "other transportation facilities" might be interpreted to include the terminals, it seems to me that the matter should be so clearly expressed that no doubt could arise. I therefore suggest the amendment of the last paragraph of section 6 by the insertion, after the word, "facilities" in line 2 on page 6 of the bill, of the words "including terminals and their equipment."

Another thing which is vitally necessary if we are to completely meet the great emergency with which we are confronted is the closest possible coordination of carriers by water with carriers by rail, and I therefore suggest the amendment of paragraph 2, of section 6, by the insertion, after the word "interest" in line 10, page 5, of the words "including the construction of tracks, structures, and equipment to facilitate the exchange of traffic between carriers by water and carriers by rail."

A copy of my proposed amendments is inclosed herein.

Respectfully submitted.

JOS. E. RANSELL.

Amendments to the bill to provide for the operation of transportation systems while under Federal control, etc. (S. 3385), suggested by Senator Ransdell for consideration by the Senate Committee on Interstate Commerce:

Amend paragraph 2 of section 6 by the insertion, after the word "interest," in line 10, page 5, of the words "including the construction of tracks, structures, and equipment to facilitate the exchange of traffic between carriers by water and carriers by rail."

Insert after the word "facilities," in line 2, on page 6 of the bill, the words "including terminals and their equipment."

NATIONAL ASSOCIATION OF OWNERS OF RAILROAD SECURITIES,
Baltimore, January 16, 1918.

DEAR MR. SMITH: Inclosed herewith is a communication to the members of this association, which deals with the present railroad situation, and which I think may be of interest to you.

Very truly, yours,

S. DAVIES WARFIELD, *President.*

HON. ELLISON D. SMITH,
The Senate, Washington, D. C.

NATIONAL ASSOCIATION OF OWNERS OF RAILROAD SECURITIES,
Baltimore, January 15, 1918.

To the members of the National Association of Owners of Railroad Securities:

The action of the Government in taking over the operation of the railroads of the United States is the most far-reaching recorded in our industrial history.

This association has followed the developments leading to this action and reply to many inquiries now calls to the attention of its members the conditions under which their properties have been taken. The questions involved are of vital concern to every bondholder and every stockholder of all the roads, and their adjustment should not be left to their operating executives. Indeed the results of any mistake here may not be confined to the holders of railroad securities—so large a part of the basis of all credit—but may be fraught with serious influence upon all enterprise for a generation to come.

The great question of permanent operation or ownership by the Government we will not discuss at this time. Its discussion involves questions of moment, not alone to the 50,000,000 people of the country who own, directly or indirectly, the securities of the railroads, but to all the people as a whole. It is an economic question which should be settled in time of peace; it has no place in these times of war and when there is to be discussed and determined the immediate necessities of the moment. Nor will we now discuss the question of the methods to be adopted by the Government for the temporary use of the properties and for their return to their lawful owners after the war.

The exigencies of war and the conditions under which the railroads of the country were being operated made it imperative that their operation during the period of the war should have the backing of the Government.

It was apparent that the necessities of the case demanded that troops, munitions of war, and commodities essential to war's conduct be routed over the railroads of the country in such manner as would insure their quickest delivery and the most effective war service and without respect to the time of delivery at destination of other freight and passengers, or to its effect on the earnings of the respective railroads. This called for pooling or the diversion of traffic and passengers from one railroad to another, not possible under existing laws and regulations excepting through the power already granted or to be granted to the President for the purposes of war. It was thought that the operating railroad executives alone could not accomplish this and properly protect the owners of securities owned by their respective railroads; that this protection could be given only by the Government.

On the other hand, it was thought that the Government could not undertake to protect the owners of the securities of the railroads unless their operation was placed entirely under Government direction.

The President had addressed the Congress on these subjects. A bill had been submitted for the action of Congress.

Questions of immediate concern to us are embodied in this bill. Its title is "To provide for the operation of transportation systems while under Federal control, for the just compensation of their owners, and for other purposes." Its designation is H. R. 8172.

Without entering into a discussion of the general provisions of the bill, of that section naming the three-year period (June 30, 1914, to June 30, 1917) the average of which is to be taken as the basis for adjusting the earnings of each carrier is to be allowed as a rental for its property, we call special attention to section 13 of the bill. This section provides:

"That the Federal control of transportation systems herein, and heretofore provided for, shall continue for and during the period of the war, and until Congress shall thereafter order otherwise."

President Wilson, in his address to the Congress, giving the reasons why the railroads should pass from private to governmental operation during the war period, said:

"The commission will be carried out with as little disturbance to the present operation and personnel of the railroads as possible. Nothing will be altered or disturbed which it is not necessary to disturb. We are serving the public interest and safeguarding the public safety, but we are also regarding the interests of those by whom these great properties are owned, and we avail ourselves of the experience and trained ability of those who have been managing them. * * *

"I need not point out the essential justice of such guarantees and their influence and significance as elements in the present financial and industrial situation of the country. Indeed, one of the strong arguments for assuming ownership of the railroads at this time is the financial argument. It is necessary that the values of railroad securities should be justly and fairly protected. * * *

"In the hands of many thousands of small investors in the country, as well as in national banks, in insurance companies, in savings banks, in trust companies, in financial agencies of every kind, railway securities, the sum total

which runs up to some ten or eleven thousand millions, constitute a vital part of the structure of credit and the unquestioned solidity of that structure must be maintained."

In these words the President has amply assured us. We are, therefore, to assume that the bill is distinctly a measure of war, to give the necessary power to the President, and to protect the owners of the securities of the railroads during their operation by the Government "at this time"—for the war period—and that such operation is for that period only.

Section 13 of the bill goes much further than this. It raises the question—may not this section in itself constitute an ownership by the Government under a rental only, the terms of which merely as a rental are not altogether satisfactory, and with the right reserved by the Government to return the properties taken when they so desire or not at all. There would seem to be a constitutional question involved in this procedure.

We quote from an opinion by an eminent lawyer on the provisions of the bill. He says:

"Federal power to control and operate the railroads in the exercise of the constitutional power to make war, continues only during the war and for a reasonable time thereafter, and is distinct from the Federal power to appropriate the railroads in the exercise of the constitutional power to regulate commerce, establish post roads, etc."

"H. R. 8172, by providing in section 13 'That the Federal control of transportation systems herein, and heretofore provided for, shall continue for and during the period of the war, and until Congress shall thereafter order otherwise' seeks to make this act not only an exercise of the war power, but also an appropriation in the exercise of the other constitutional powers."

May not the owners of the railroads, therefore, very properly make the request that the bill be framed to carry out the declared intention of taking the railroads for war purposes only and not for indefinite and continuous operation after the war, or for experimental purposes in connection with their operation or control. It should not be a requirement of the bill that the owners of the railroads, whose properties have been taken as a measure of war, must appeal to Congress to restore them at the expiration of the period for which they were taken. We may well ask that their restoration shall automatically take place at a fixed period at the close of the war.

It is not sufficient to say that we do not know under what conditions the railroads shall be returned to their owners—under what form of governmental control or regulation—or what may be the requirements for their future operation under plans of greater centralization of railroad capital and for greater cooperation in operating methods, which may take place. Such reasons do not alter the fact that the Government's tenancy is for the purposes explicitly stated by the President and, therefore, can only be temporary.

The properties taken must be properly maintained—"nothing altered or disturbed which it is not necessary to disturb"—and they should be restored to their owners at the expiration of the war in as good condition as when taken. Will the desire of the President be carried out unless the bill provides for an adequate guaranty to the security owners which he held to be necessary to maintain the "structure of credit and the unquestioned solidity of that structure" of which "railroad securities, the sum total of which runs up to some ten or eleven thousand millions, constitute a vital part." Such indefiniteness in the bill is not the reassurance spoken by the President as required for the financial purposes of the Government.

Referring to section 1 of the bill, under which the railroads are to enter into an agreement with the Government in connection with the rental for their properties, the legal opinion cited continues:

"No corporate power exists in any railroad or carrier to make an agreement as contemplated by section 1 of the bill. The directors of a railroad company would be empowered to enter into an agreement for the duration of the war, and a reasonable adjustment period thereafter; but the directors and stockholders together are without charter power to disable the corporation for an indefinite period from discharging the public duties imposed by its State charter. Any stockholder can object and stop it. The Federal Government may appropriate the railroad company's property, and in that case the directors and stockholders may agree to the compensation to be paid the company. H. R. 8172 is not sufficient in law to be construed as an exercise of the power of eminent domain. The indefinite period of the 'possession, use, and control' introduces an element of uncertainty which prevents the ascertainment of just

of this bill, that the House committee has requested, and I have read the draft of some sections, that of course we have not had time to present our views in the form of the draft amendments to the bill, and that will be done probably Monday.

Mr. THOM. Mr. Chairman, before you adjourn, I have some amendments—some perhaps verbal and some perhaps more substantial—that I would like to have an opportunity of presenting. I will give a copy of them to the representative of the men. I would like to know about what would be the pleasure of the committee in respect to how that should be accomplished.

The CHAIRMAN. You can just file them with the clerk and he will give them to the committee.

The committee stands adjourned until 10 o'clock Monday morning.

(Whereupon, at 5.25 o'clock p. m., Saturday, January 26, 1918, the committee adjourned until Monday, January 28, 1918, at 10 o'clock a. m.)

Whether the great areas of unoccupied millions of acres of land of our country can be successfully and intensively developed by means better than through individual initiative and railroad operation, with the advantages incident to the full play of individual human endeavor; whether the full development of the industrial life of the Nation can be accomplished better than through the competition involved in the building of railroads by private capital and the competitive system for securing and for the establishment of industries thereon, and through the proper and efficient operation of privately owned railroads under Government control and regulation, wisely conducted; whether shippers in competition with other shippers, and whether the public, can secure better service than through the service they have been accustomed in times of peace to have offered them under the stimulus of individually operated enterprise; and whether employees can be given through other means the latitude for the enjoyment of personal liberty free from political restraint—all these are questions which are not at issue at this time, and should not be made an issue by an indefinite provision of an act of Congress permitting that to be done in a serious situation outside of and beyond what the President very pointedly stated was his purpose in the premises. As previously pointed out these are economic questions too vital to the country to bring up at a period other than during the time of the peaceful pursuits of the people and the conduct of our Government in times of peace.

Nevertheless, if there is the intention to permit a situation to be created the result of which will make it impossible for you to get back your properties with the value attached to them at the time they are taken as going concerns, and which will fasten permanent Government railroad operation on the Nation, without adjusting the terms of payment for the principal of the properties, it is essential to the protection of your securities and only fair to you that such intention should be made known now.

The Director General has made the request that the railroads give their financial requirements for the year 1918 and state what securities can be issued by them and sold for such purposes. It is to be hoped that such guaranty of the Government as shall be finally embodied in the bill may be such as will establish the credit of the railroads sufficiently to justify those who have purchased their securities in the past to continue to purchase them.

In addressing the convention of the Association of Life Insurance Presidents of the country, before the present action of the Government was contemplated, these words were used by me:

"The railroads will not emerge from the war as they existed before it. Your securities may bear altogether a different relation to the properties which issued them."

The time has come earlier than anticipated. This association through its various committees will endeavor to cooperate with the Government for the protection of those it represents.

S. DAVIES WARFIELD, *President.*

JANUARY 18, 1918.

Mr. S. D. WARFIELD, *Baltimore, Md.*

MY DEAR SIR: Please accept my thanks for your letter of January 16 with printed inclosure, which I shall take pleasure in reading.

Sincerely, yours,

ELLISON D. SMITH.

PRESENTED BY THE COMMITTEE FROM THE MISSISSIPPI RIVER SECTION OF
WATERWAYS.

[M. J. Sanders, Chairman Board of Trade of New Orleans.]

The development of railroads brought on in many sections where waterways had been important commercial transportation factors a very strenuous form of competition. This was particularly the case in the Mississippi Valley, where the competition was almost cutthroat in its nature, and freight rates were forced far below a remunerative level at all river points where water competition existed.

There were two potent reasons why in this competition river carriers were driven from the field.

First. The undeveloped condition of the river channels by which navigation was impossible for long periods and generally uncertain.

Second. The belief by investors that river carriers without other support could not successfully compete when the whole of their traffic was carried at the low river rates, whereas the railroads at nonriver points were able and did charge very much higher and quite remunerative freight rates.

At one period the Mississippi River and its tributaries carried the great bulk of the commerce of this immense drainage area and there were upon these streams thousands of craft engaged in commercial transportation.

The great bulk of this equipment disappeared before the policy of the Government for the improvement of navigation upon these streams furnished regular and practicable navigable channels.

Some of these river companies were bought out by the railroads, and this was particularly the case with a very important line of barges which operated with great profit to its owners for many years between St. Louis and New Orleans and which, notwithstanding the serious drawback of irregular and inefficient navigation, was so strongly entrenched with the commercial public that a great railroad operator paid the owners of the barge line a sum which is said to have been many times the value of their floating craft, and the service was discontinued, the barges being tied to the river banks and left to rot.

There still remain undeveloped many streams which can be of great transportation value, but on the Mississippi River, for some 1,200 miles from St. Louis to New Orleans, there is already a permanent navigable channel with not less than 8 feet of water available all the year round.

The State of New York has now almost completed its new barge canal, which will also have a navigable depth of not less than 8 feet from the Hudson River to Buffalo.

There are other streams fully or partially improved, but upon these two waterways, at least, transportation can be furnished with suitable equipment at less than the cost per ton-mile upon the most efficient railroad operating on low grades.

Very careful investigations, particularly in regard to the Mississippi River, have been undertaken by representative commercial bodies within the past 12 months, and committees, after thorough research, report that with modern towboats and steel barges commodities can be carried on the 1,200-mile stretch to and from St. Louis and New Orleans profitably at 80 per cent of the existing railroad rates, which are very much lower than the average railroad rates.

There is no doubt also that upon the completed New York State barge canal, with suitable equipment, commerce can be carried between Buffalo and New York cheaper than by means of the magnificent trunk lines of railroads, which in many cases parallel the canal for miles.

There is no complete record of the traffic which moved upon the Mississippi River and its tributaries, but it was at one time several millions of tons annually.

The record on the old and entirely inefficient Erie Canal, between Buffalo and the Hudson River, shows that at one time as much as six millions of tons was carried thereon annually.

It is quite certain that upon these two waterways in their present improved condition 50,000,000 tons of traffic can be carried annually, and, being handled at terminals other than those of the railroads, this additional transportation will serve not to congest but to relieve the already seriously overburdened terminals and roadbeds.

It is admitted, even by the railroad representatives, that they are unable, without a very large addition of rolling stock and other facilities, to handle the present volume of the country's traffic.

It is seriously doubted, even with such added equipment, that the railroads, without a large increase in roadbeds and terminals, can efficiently handle the enormous war traffic, together with the irreducible minimum of domestic.

We are apparently overlooking entirely our navigable streams and canals, upon which many millions of dollars have been spent, both by Federal and State Governments and by private parties, with the specific object of fitting them as commercial highways.

There are many thousands of miles of these waterways at this moment available for transportation purposes, and though it is true that a large percentage has not yet been sufficiently developed to yield more economical transportation results than the railroads, there is at least one stretch, 1,200 miles in length.

on the Mississippi River, from St. Louis to New Orleans, of enormous capacity, upon which traffic can be carried at much less cost per ton-mile than upon any railroad.

There are also the Ohio, the Missouri, the Illinois, and other rivers which can readily transport many times the volume of their present traffic; the New York State Barge Canal, of supreme importance to the eastern situation (expected to be ready for through traffic by the next navigation season), and other waterways on the eastern seaboard of distinct transportation value.

The barges for use on these waterways can, if necessary, be built entirely of wood, it being essential to use steel only for the towboats. The amount of steel required for water transportation equipment is therefore very much smaller than for an equivalent tonnage increase in railroad equipment.

We earnestly recommend that equipment for use in transportation upon all serviceable waterways be promptly constructed as the very best and quickest method of furnishing additional transportation upon which the conduct of the war is vitally dependent.

This committee, which represents the organized commercial interests of St. Louis, New Orleans, and Memphis, can speak specifically of the Mississippi River from St. Louis to New Orleans, and believes this section of paramount value just now, as it offers economical and important capacity and carries the traffic away from the congested area and the overburdened eastern ports to the ports on the Gulf, which are being used much below their normal capacity.

For this section of the Mississippi River our recommendation to the Government is that as a war measure a fleet of 16 steel towboats and 200 wooden (or, if possible, steel) barges be constructed of such dimensions and specifications as are suitable to the physical conditions governing this waterway.

We have had plans drawn and careful estimates compiled. These show the approximate costs, as follows:

Wooden barges, not to exceed 200 feet in length, with a cargo capacity of 1,400 tons each.

Towboats, each computed at \$300,000; barges, computed at \$42,000 each.

Sixteen towboats and 200 barges.

Total approximate cost, \$13,600,000.

OPERATION.

Mileage between St. Louis and New Orleans, 1,150.

Round trips, 16 round trips annually, with six or eight barges to each tow, as circumstances direct.

Towboats to be kept moving.

Barges being left at terminals for following towboat.

Maximum annual capacity, 3,480,000 tons.

Estimated gross earnings, at present railroad tariff rates, per annum, \$5,000,000 to \$7,000,000.

We do not claim reliable estimates of the cost of railroad equipment, but from information received have figured locomotives at \$50,000 each; box cars, \$2,000 each. We have carefully underestimated the railroad equipment required for an equal ton-mileage, and place it at 100 locomotives, 12,800 freight cars, costing approximately \$30,600,000.

It is important to remember that the construction of railroad equipment must directly compete with the manufacture of munitions, and the transport of raw material must add to the railroad traffic burden, whereas the wooden equipment for water transportation, particularly on the Mississippi River system, can be handled almost entirely by water.

We are in a position to offer to the Government the services of responsible parties, now ready, who will undertake a contract for the building of these barges on any equitable terms, with the assurance that within a period of six months from contracting a large portion of this fleet would be available for transportation.

The construction of the towboats will of necessity be placed in the hands of men expert in that line, who are available, and can start on the construction work as soon as a priority order has been issued for the necessary steel.

The committee, representing the three cities, is further prepared to organize a company which will invest the necessary capital to undertake the management and operation of this fleet, under such terms as the Government may decide.

Modern river terminals are already under construction at St. Louis. Memphis is preparing to add to her facilities. New Orleans has already splendid terminals for river and ocean traffic, owned and operated by the State of Louisiana.

The Government arsenal at Rock Island, the great factories at Moline, Alton, St. Louis, and at numerous other points along the Mississippi River and its tributaries can find ready transport to the seaboard by water and thus help relieve the tremendous pressure on the trunk rail lines to the East.

It is, in our opinion, futile to rely upon private capital under present abnormal conditions to revive transportation upon our waterways. In any case private action will move very carefully, and by its means alone it would be many years before water transportation of any serious importance would thereby be available.

This is essentially a matter which must be handled by the power of the Federal Government; \$50,000,000 spent promptly by the Government in buying suitable equipment for our waterways will furnish more definite and early relief to present transportation conditions than five hundred millions spent in increasing railroad rolling stock. Only by enormously increased terminals and roadbeds at a fabulous expense can the railroads ever overtake the present needs of the country.

It is extremely doubtful if they could ever do this alone; it is impossible that railroads alone can furnish the transportation absolutely essential to our continued commercial development as economically and as efficiently as will be evidenced by the joint use of all our water and rail possibilities.

The project we are presenting is to answer the call of the Government that the communities respond with suggestions to facilitate the movement of necessities in war time. We are convinced that other sections can and will do likewise, and that, without immediate action toward utilizing our navigable waterways, it will be impossible to avoid very serious handicap in the conduct of the war.

WASHINGTON, D. C., February 1, 1918

HON. ELLISON D. SMITH,
*Chairman Committee on Interstate Commerce,
United States Senate, Washington, D. C.*

DEAR SIR: I inclose memorandum relative to the so-called short-line railroad situation, about which I have talked somewhat to Congressman Hull, of Tennessee. I am sending this memorandum to you at his suggestion.

Very truly, yours,

RAY C. OSBORN

MEMORANDUM.

The accompanying draft of a new section to H. R. 8172 is an attempted suggestion for a tangible basis of discussion in working out the so-called short-line railroad problem developed by the hearings.

SHORT-LINE PROBLEM IN GENERAL.

The President's proclamation considered the railroad problem from two standpoints—(1) war transportation and (2) rehabilitation of confidence in railroad securities. The general financial effect on the railway security market was to strengthen it. The effect of leaving out part of the roads will be, to a certain extent, to weaken it and destroy confidence in the so-called short-line securities by the creation of uncertainty as to the effect of such exclusion.

INCLUSION OF ALL ROADS IN FEDERAL CONTROL.

From a standpoint of transportation problems alone, possibly all roads need not be included. From a standpoint of financial confidence in railway securities, all roads which, prior to the Government control, were a part of any through route for general freight transportation ought to be included.

The financial problem of inclusion of all roads probably divides into two parts:

- (a) Annual operating income.
- (b) Capital financing.

1. *Annual operating income.*—It might be a comparatively easy matter for the Government to estimate its maximum liability, so far as this compensation is concerned, on some such basis as this:

The average operating revenues of the railroads for the three-year period is about \$3,400,000,000. The operating revenues of roads earning over \$1,000,000 a year comprise about 97½ per cent of such total. It would follow that the gross earnings to be excluded, if the Director General should exclude the so-called short-line railroads, would comprise about 2½ per cent of the above average operating revenues. This would amount, in round figures, to about \$85,000,000 annually. A rough estimate of operating cost for the smaller roads would be about 70 per cent of operating revenues. It would follow, then, that the guaranty of the Government might be limited to 30 per cent of \$85,000,000, which would be about \$26,000,000 annually. It might be safe to assume, however, that the Government would receive at least 60 per cent of the above 30 per cent, which would limit the Government annual maximum liability to, say, \$8,000,000—as a matter of fact, the out-of-pocket liability would probably be much less.

2. *Capital financing.*—This is perhaps the most difficult part of the problem so far as any tangible estimate of financing needs or Government liability is concerned. The Government ought to be able to form a fair estimate, however, from the railroad answers to the letter of Commissioner Daniels sent to all roads on January 5, 1918.

3. *Methods of solution of problem.*—(a) The estimates of maximum liability as above might lead to the conclusion that the liability assumed by inclusion would be small compared to the effect of exclusion upon public confidence. The Government would then include all roads.

(b) The Government might conclude it could accept the annual operating income liability but not the capital financing liability. It could then divide the operation of the pending bill into two parts:

1. Roads earning over \$1,000,000 annually.
2. Roads earning under \$1,000,000 annually.

Both classes of roads might be treated together as to annual operating income but separately as to capital financing.

EXCLUSION OF SO-CALLED SHORT-LINE ROADS.

Should the Government conclude to make no inclusion of all roads in the bill, it ought, in the interest of fairness and public confidence in railway securities, to provide in the bill a method of hearing the claims of the so-called short-line roads and a reasonable method of ascertaining and adjusting any financial damage caused by exclusion.

The following outline might be considered in dealing with this situation:

1. Some of the short-line railroads will have to be taken over at the initiative of the Director General, leaving outside of Federal control:

- (a) Roads desiring to be included.
- (b) Roads desiring to be excluded.

2. Roads desiring to be excluded:

The hearings have shown some roads have this desire, and there can be no difficulty about them. The Government does not want them included and they do not want to go under Federal control.

3. Roads desiring to be included:

The accompanying draft of a new section of the bill gives them sufficient time after its passage to consider its terms and make up their minds whether inclusion is desired. If it is, and they are excluded, this amendment offers them the following remedies:

(a) Voluntary agreement with the Government on a basis of compensation. This might be limited to such annual compensation as the included roads would receive.

(b) If they do not take this, it gives them the right to adjudication under section 3 of the act by the boards of referees.

(c) If they do not care to take such adjudication, they are remitted to their rights in the Court of Claims under section 3.

4. Roads that have been denied inclusion may, of course, be taken over voluntarily by the director general later.

5. Roads that have been included originally or have been taken over later may be relinquished and suffer damage by relinquishment.

All of the above has been considered from the standpoint of furnishing a tangible basis of a consideration of the so-called short line railroad problem in its relation to public confidence in the securities of such roads which are held by financial institutions throughout the United States.

R. C. Osgood.

SUGGESTED AMENDMENT IF ALL ROADS ARE NOT INCLUDED IN FEDERAL CONTROL.

SECTION.—If any system of transportation in existence on December twenty-eighth, nineteen hundred and seventeen, which shall not have been taken over by the President under Federal control, shall, within thirty days after the passage of this act make application to the President to be taken under Federal control, such application shall be granted or denied within thirty days after such application shall be made. If such application shall be denied and such system shall during the continuance of the Federal control herein provided file with the President a claim for damages growing out of such denial, the President may agree with such system either in the manner provided in section one or section three upon the amount of damages and pay the same to such system, or such system may be remitted to its legal rights for such damages to the remedies provided in section three hereof as if it were under Federal control. The amount of damages adjusted by voluntary agreement in the manner provided in section one shall not exceed the amount of just compensation that might be allowed to such system under section one hereof if it had been brought under Federal control.

If during the continuance of the Federal control, herein provided, the President shall relinquish Federal control of any carrier, such carrier may within thirty days after such relinquishment make application to the President to be taken again under Federal control, and such application shall be granted or denied within thirty days after such application shall be made. If such application shall be denied any claim for damages growing out of such denial filed by such carrier may be adjusted or adjudicated as provided in this section in case of a system whose application to be brought under Federal control shall be denied. In case any system or carrier whose application shall be denied, as aforesaid, shall thereafter be brought under Federal control any damages recoverable under this section on account of such denial shall be limited to those arising during the time it shall not be under Federal control.

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